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A Current Account of Processes Regulating Business and Construction Starts in BiH:

A Long and Winding Road

Streamlining Permits and Inspection Regimes Activity

Activity Number: 24

Contract No.AFP-I-00-03-00030-00, Order No. 01

DRAFT

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TABLE OF CONTENTS

I INTRODUCTION	5
II EXECUTIVE SUMMARY	7
III METHODOLOGY	11
IV BUSINESS START-UP PROCESS	13
V URBAN, CONSTRUCTION AND USAGE PERMITS	53
VI INSPECTION PROCESSES	71
ABBREVIATIONS AND ACRONYMS	83

I Introduction

This document reports quantitatively and descriptively on the procedures associated with starting a business and obtaining construction approvals in Bosnia and Herzegovina. In addition, it provides a status report (and content summary) on recent legislative reforms, sponsored by the World Bank in the area of regulatory inspections. This report was prepared by the USAID/SPIRA team between October 2005 and February 2006.

At the outset, SPIRA expresses its appreciation to the personnel associated with USAID's Financial Sector Business Advocacy and Training Project (FSBAT) for preparing, in Autumn 2004, their excellent *Assessment of the SME Permitting and Inspection Process in Bosnia and Herzegovina*. The SPIRA team was tasked with updating the process maps that were included in that assessment, an assignment to which the present report responds. Although our methodology and findings differ somewhat from the FSBAT study, we traveled very much along the trail they blazed and the markers they left provided substantial assistance. Where practicable we followed FSBAT's approach, including the selection of municipalities studied. Stari Grad (Sarajevo), Zenica and Banja Luka were employed for this purpose (although data from additional municipalities was collected for the construction-permitting portion of the report). Details of the methodology employed are addressed in a section bearing that label below.

Much more remains to be done in the areas of pre - and post-registration requirements for Limited Liability and Joint Stock Companies, and in all phases of start-up for Crafts.

This report should be understood in two contexts. In the broader view this is the most recent of several studies of the regulatory obstacles that Bosnian businesspersons face in starting a business and/or obtaining a construction permit. The SME Intervention and Gap Analysis funded by USAID, and reported on in May of 2004 by a BearingPoint project, identified the existence of an "overly complex system of registration, with fragmented laws, redundant fees and confusing filing requirements." It, in turn, cited the March 2001 FIAS Report, *Bosnia and Herzegovina: Commercial Legal Framework and Administrative Barriers to Investment*, as establishing that the "simple act of initial registration involves [at] least 15 separate steps and lasts more than 70 days." The World Bank's Doing Business Reports have provided annual benchmarks for business launch and, beginning with the 2006 Report, construction permitting. Although the results of the various "core samples" that have been taken are not entirely congruent¹, their thrust is similar: it is clear that Bosnia and Herzegovina is greatly in need of regulatory streamlining.

The second context in which this report should be understood is much more specific. This remapping of regulatory processes is the beginning of reform activity. Data has been collected and a description of the processes, in some detail, is presented here. The patient has been examined; signs and symptoms of illness have been noted. An authoritative diagnosis is the next step. The value of the report is in facilitating this

¹ The differences in time noted appear to be due to variations in methodology and to the limited size of samples.

diagnosis and the treatment to follow. The SPIRA Team intends, as a next step, to turn to the governments of BiH and to its business community to identify, through a cost/benefit review of these provisions, which regulatory requirements can be eliminated, consolidated, reduced or otherwise streamlined. Entity-based Working Groups will be formed and review will begin.

There are some regulatory procedures where reforms appear obvious through which improvements can be swiftly achieved if the opportunity is seized. One of these is to transfer the certification of minimum technical requirements required for business initiation to the period after business launch, except in the narrow categories of business activity where pre-certification is necessary to protect specific public interests (such as those involving food preparation). Compliance with these requirements are then established through regular inspections – after the business has become operational, earning revenue and paying salaries to employees and taxes to the government. As the firm of Jacobs and Associates pointed out in a presentation prepared for SEED in April 2004, this has been successfully accomplished in other countries and would provide a mechanism for rapid improvement in BiH.

Improving the regulatory environment for businesses would help them and the economy, and would create jobs. It might also improve the opinions of the business community about its governmental representatives. The 2005 Business Barometer Report for the FBiH² (conducted by the Entity Employer's Association with support from SEED) reports that 0% of the companies surveyed believed that the government has done enough "with regard to business conditions in 2004", although 3.4% of those surveyed claimed that the government did "as much as it could." The other responses were divided across "do not know", "did nothing" and "did not do enough."

This data is underscored by past surveys by USAID and UNDP indicating that the public is most concerned with economic development and employment growth. And a recent survey conducted by PRISM research for USAID-funded IRI indicates that Bosnian voters are putting much greater weight on the past work and activities of their elected representatives than they are placing on "campaign promises" – programs of work laid out for the future. This situation suggests that government leaders, as well as business and the public, stand to benefit from near term changes in the regulatory environment that favor business development.

A great deal has already been done in this area. DFID's Reform of Business Registration Project (RBRP) has achieved major improvement in the judicial registration of Limited Liability and Joint Stock Companies. The laws DFID sponsored, in conjunction with the electronic transmission system it established for application, recording and notice of the registration determinations has standardized registration practices and created a single registration record system, and will reduce the time for such decisions to 5 days, eliminate a number of steps in the registration process, etc.

But as this report indicates, much more remains to be done in the areas of pre- and post-registration requirements for Limited Liability and Joint Stock Companies, and in all phases of start-up for Crafts. Hopefully this report will serve as a map, or at least a compass, for charting a new path of reform.

² The parallel RS Report provides roughly similar marks for the RS government, with 1.2% of the respondents saying that the RS Government "did enough" and 2.9% "did as much as it could."

II Executive Summary

USAID/SPIRA conducted a close review of the regulatory processes associated with business and construction starts in Bosnia and Herzegovina using data drawn primarily from 3 locales: the city of Banja Luka, and the municipalities of Stari Grad (Sarajevo) and Zenica. The review aimed to describe and quantify the cost and time involved in completing the associated approval processes, i.e., in getting to a point where a business could legally engage in commerce or a structure could be occupied. The analysis of business start-up looked at the processes associated with launching both a Limited Liability Company (LLC), which must register at courts, and independent craft shops, which are registered through municipal offices. The pre-registration and post-registration phases were also reviewed and quantified as to each type. The results of these studies are shown in the following table for LLCs (where the “T” identifies time and “CT” cost):

For Limited Liability Companies (LLC)

STAGE	STARI GRAD		ZENICA		BANJA LUKA	
	T	CT (KM)	T	CT (KM)	T	CT (KM)
Pre-registration	10	2166	10	2166	10	2016
Registration	50	405	14	320	61	950
Post-registration	111	612	26	607	44	1484
TOTAL:	171	3183	50	3093	115	4450

Note that with regard to the time taken for registration the table used here reflects data that has been filtered, to remove from statistical calculation the files that remained open at the time of SPIRA’s registry review. If the open files are included in averaging the duration, the figures for Sarajevo and Banja Luka rise substantially.

The question immediately arises, “Why is Zenica so much faster in permitting an LLC to start than either Sarajevo or Banja Luka?” The answer to that question is critical to SPIRA’s objectives and merits some discussion here. This appears to be the result of several factors (including the existing backlog, the volume of cases to process, improved administrative efficiency, etc.), but the most important may be that Zenica authorities appear to allow greater flexibility in the determination of these applications (including the judges determining court registration, one of whom specifically noted that the judges there attempt to avoid delaying determination of cases where very minor technical errors may appear). This is also critical to post-registration, affecting craft shops as well as LLCs.

As is noted in the body of the report, when the current head of the Zenica Department of Economy was appointed, he immediately determined that business starts could be accelerated through the limited enforcement of a provision requiring sanitary facilities in each premises and by eliminating the need for a use and construction permit (for pre-existing premises) by having the Public Institute for Spatial Planning conduct an on-site inspection and issue a certificate of “good standing order.” This innovation put Zenica ahead.

All locations suffer equally under many requirements. The very first step in the registration of a craft shop provides an indication of how over-regulated this process is. At the outset, an applicant must obtain a certificate of “business ability” from the local Center for Social Welfare. In fact, all the certificate evidences is that the applicant is not on a list of persons that are under the legal guardianship of the Center, due to mental illness. This requirement applies in all three venues that were the subject of this research.

Some areas bear greater regulatory burdens than others. Stari Grad/Sarajevo is handicapped by Cantonal regulations that require a “Purpose of Premises” (PoP) approval during the certification of minimum technical requirements, although this is not without some benefit as it provides for zoning control. However, this requirement, which neither Zenica nor Banja Luka bears, adds to the time required for business launch.

The regulation of construction activity is complex, time-consuming, and hindered by the involvement of multiple layers of government and the participation of outside parties.

While there is some justification for the PoP requirement above, controls on business start-up carry a great deal of regulatory baggage not associated with this process. As the report notes, requirements that might support indirect enforcement of tax obligations add to the regulatory burdens. A consistent finding (and one that is illustrated further by Zenica’s *ad hoc* solution above) is that requirements associated with real property status weigh down the process of meeting minimum technical requirements. These prerequisites include verification of ownership and the legality of occupancy. Legally, the review is also to include verification of a “use permit.” However, because so few business founders could produce these in association with their leaseholds the government of Sarajevo Canton, by

issuing a memorandum, directed that a construction permit would suffice. Banja Luka adopted a similar solution.

The above regulatory bypasses (including those noted in Zenica) reflect several key dynamics: 1) the regulatory environment is so unrealistic that officials are having to opt out of enforcement at points to keep the “system,” such as it is, from collapsing, 2) regulatory revision is not being used effectively to address these systemic stresses, 3) these systemic problems occur because one government function (here the agency that would issue “use permits”) has not or cannot keep up with demand for services – and this confounds other officials’ decision-making and 4) regulatory failures in controlling the use and ownership of land create a “fault line” undermining reasonable regulatory management of business start-up.

The portion of the report addressing construction permitting bears out this last point. The review finds that it is often very difficult to determine ownership in any reasonable amount of time, if at all. Ownership records are sometimes incomplete, contradictory or even non-existent. Where property has been “nationalized” by the former regime or is otherwise under state control the difficulties associated with sale/transfer for commercial use are enormous, requiring several separate processes.

The regulatory system bearing on land use assumes the existence of meaningful urban development plans. Where these are incomplete, obsolete, inadequate or inflexible – which are common conditions – the system essentially fails; requiring *ad hoc* administrative decisions that fill the gap in the plans. Such *ad hoc* determinations are both time consuming and fraught with the opportunity for corrupt influence. The USAID/SIDA

Government Accountability Project (GAP) is working to fill these holes in planning and SPIRA is working with them.

There is a host of other decision points where the involvement of multiple layers of government complicates and slows construction permitting: permitting for environmental clearance and inter-city highway access rights; direct administration of projects of “cantonal” (in the FBIH) or “entity-level” significance; review and award of “Priority Rights to Construct”; adjudication of complaints against projects by dissatisfied neighboring parties; and review of rural investment project proposals. The regulation of construction activity is complex, time-consuming, and hindered by the involvement of multiple layers of government and the participation of outside parties.

Across the breadth of this report there are several themes that emerge as possible starting points for the initiation of systemic reform:

Improvement in the functioning of existing regulatory structures, however cumbersome they may be, can be improved through increased flexibility and an enhanced “customer service” orientation by officials.

Despite layers of regulations, municipalities/cities have the ability to improve the management and administration of many processes associated with business starts. Because those locales that do so can be expected to attract businesses, they will create jobs.

Regulations that have no direct bearing on the public policies related to business start-up could be removed from the start-up process (including those relating to property ownership issues and some aspects of tax enforcement).

Minimum technical requirements, and other prerequisites for business or construction starts, that are not necessary to protecting the public interest can be shifted chronologically so that they follow business start-up or building use, and are enforced through subsequent inspections.

Points where government bodies have opted to drop regulatory elements because they are practically impossible to enforce may be appropriate starting points for regulatory reform. The political will for change is present and a compelling need for change apparent.

It is clear that government civil servants are “victims” of regulatory chaos as well as businesspersons, builders and citizens. The actions of some officials, in generating what are often good results despite outmoded and overly complicated regulatory systems, reflects professionalism. Their frustration, and understanding of the need for change, can find positive expression in an opportunity to help shape these systems.

Working groups comprised of concerned government officials and stakeholder representatives will have the capacity to collectively identify specific reforms supporting improvements in business and construction starts and greater protection of public interest.

As the report notes, requirements that might support indirect enforcement of tax obligations add to the regulatory burdens.

III Methodology

In collecting data to measure the time and cost associated with business and construction starts in BiH, the SPIRA Team chose to sample the same locations examined by the 2004 FSBAT Report: the City of Banja Luka, and the municipalities of Stari Grad (Sarajevo)³ and Zenica. Like FSBAT, we examined business starts for Limited Liability Companies (LLC) and craft shops. The construction component examined a range of project types, and in addition to the three target locations obtained limited data from other municipalities⁴.

SPIRA used a variety of tools to collect data regarding business starts: surveys (which asked for data covering activities during the period of September – November 2005) and interviews, a sampling of files generated by court/administrative actions, and finally a statistical analysis of registration determinations as established by court/municipal records. Surveys were disseminated to governmental officials (at relevant levels) and to business owners and businesspersons residing or working in locations under consideration. The SPIRA team interviewed more than 20 governmental officials, administrators, judges, attorneys and business persons.

The team encountered some problems in collecting data; sometimes significant difficulty. Record systems differed substantially from one locale to the next, and also varied in terms of quality. For example, one local administration maintained a log clearly showing when craft shops submitted registration applications and the dates these were decided. Another had a log that showed the date of submission, but as to decision -- only a "yes-no" notation as to whether it was reached within the term allowed by law. Comparisons of court registries were made difficult because the courts in Sarajevo and Zenica recorded the actual decision date and the court in Banja Luka recorded closure as the "archive date." Based on the patterns identified in archive dates we reduced the average time of decision (as reflected by archiving) by 7 days, because, based on the frequency of archiving, this appeared to be roughly the average lag between these events.

SPIRA undertook the collection and review of bulk business registry records because data collected through other means showed substantial divergence between locales within SPIRA's research, and between SPIRA's preliminary results and those reported by FSBAT. Concerned that the samples we were working from were not in fact representative, SPIRA obtained data regarding the duration of each registration action that was initiated during the 2nd quarter (April, May, and June) of calendar year 2005. Court registries (logs) reflecting the filing date of these actions and, respectively, their determination were reviewed and the duration of the process noted. In Sarajevo 139 court registration actions were recorded, in Zenica 52, and from Banja Luka 180. Regarding craft shop registrations, administered at the municipal level, the following numbers of cases were included in our statistical analysis: Stari Grad: 41, Zenica 43 and the City of Banja Luka 423. Due to data entry issues, 90 cases from Banja Luka's 423 were randomly selected.

³ Because the procedure for starting a Limited Liability Company is the same throughout Sarajevo, the results on this area are reported as "Sarajevo", rather than "Stari Grad".

⁴ SPIRA's construction group worked closely with the USAID/SIDA-funded GAP project in developing the survey/questionnaire it used and in sharing data.

The team expected that the 2nd quarter was far enough back that, even in courts/offices with backlogs and as to cases where supplemental filings were requested, a decision would have been reached. But this was not always the case. A substantial number of open cases, filed in that quarter, were reflected in the court registries at the time of SPIRA's review. These were assigned, for purposes of statistical analysis, the dates of SPIRA's audits (January 2006) as artificial "close" dates. As a consequence these cases reflected durations of between 6 and 9 months, and tended to skew the average. Assuming that these were cases where the court/office had simply not reached a decision, such skewing reflects the reality of the process. However, we recognized that it was quite possible that the officials had requested additional documents from a party and that the open files reflected a failure of the applicant to respond. With this in mind, we generated a second table that excludes open files from the analysis.

As is suggested by the above discussion, SPIRA's methodology does not limit its review to those cases where the documentation submitted by an applicant is in perfect order. Crucial failures of the registration and post-registration systems appear to be in how these define errors in applications and in the manner that "erroneous" applications are dealt with (as may also be reflected in the cases held open, perhaps indefinitely). As is noted in the Executive Summary, some of these problems are addressed by the DFID-sponsored business registration reforms. But as to post-registration generally these problems certainly continue.

SPIRA starts with the assumption that the overall process of getting approvals for a business or a building should be sufficiently straightforward and rational that complete and correct applications are the norm rather than the exception. This is an integral part of the streamlining process. Data should be looked at in terms of how long these processes usually take, not under optimum circumstances.

This applies to the construction-start analysis as well, which notes at points the time frames for best case scenarios but also flags likely real world durations. Data collection for the construction portion of the report included surveys of officials at municipalities, and various ministries associated with spatial planning. Interviews were conducted with investors in Sarajevo and Banja Luka, the RS Institute of Urbanism, the Banja Luka City Institute for Development, the Banja Luka Regional Chamber of Commerce and the Sarajevo Cantonal Institute for Development. The municipal offices that manage urban, construction and occupancy permits file these separately and do not maintain registry records. Consequently, a broad statistical analysis such as that discussed above for business registration was not feasible. However, closed files were reviewed where these were made available. 10 were randomly selected in Zenica and information on 4 cases was provided to the team in Sarajevo.

Copies of survey forms, notes/minutes of interviews as well as data captured from file reviews and from court/municipal registries are being maintained at SPIRA's office. A contact list of interviewees is also on file. Persons interested in reviewing our findings are welcome to view these, subject to conditions protecting confidentiality where necessary

Statistical conclusions presented in this report were generated using standard software packages: Microsoft Excel and SPSS.

SPIRA project would like to thank representatives of public administration, judiciary and business community for their input and assistance without which making of this report would not be possible.

IV BUSINESS START-UP PROCESS

The legal framework that regulates registration of companies and craft shops can be divided in two groups:

1. Core laws and supplementing regulations which are essential and always apply in the case of a company or craft shop foundation. The number of these laws and supplementing regulations is small and it is relatively easy to identify them;
2. Other laws and supplementing regulations which are not essential and apply only in a particular situation. This group regulates additional terms and conditions that are to be met by the business in order to become existing or fully operational. They are usually connected to the legal structure of the company, specific business activity, geographical region, profession, etc. The number of these laws and supplementing regulations is huge and it is difficult to identify them without knowing all practical details in connection with the business.

As to the legal framework in Federation BiH, currently there is a "twilight zone" caused by a duality of legal systems: the new system is in effect albeit not enforced, while the old one was abolished but still in use. This applies both to craft shop and company start-up.

Definitions

Limited Liability Company is an entity whose core equity is divided in shares between its members. In these companies each member is responsible up to the amount of capital they input. These entities register at the Basic Court in the RS or the Municipal Court in the FBiH.

Joint Stock Company is an entity traded on the stock exchange. Its value is based on the price of stock. These entities register at the Basic (Municipality) Court in the RS or the Municipal Court in the FBiH.

Craft Shop is a self-employed individual performing business activity with or without business premises. In the case of partnership, partners are jointly and severally liable for business liabilities.

Procedure is defined as any interaction of the company founder/craftsman and/or a company external parties (government agencies, courts, tax authorities, Pension Funds and alike).

Time is recorded in calendar days. Steps that are completed immediately (i.e. opening of a bank account) are recorded as 0 days.

Business is a general term for both Limited Liability Company as a legal entity and a craft shop as an individual who undertakes a business activity.

Entrepreneur is a person who owns a business.

Fee is the amount of money charged to the entrepreneur or business by the relevant state authority.

Cost is any amount of money which is not a fee that is paid by the entrepreneur or business in the start-up process.

Legalization is a procedure similar to notarization, certification or acknowledgement of a document.

Note: Although SPIRA is particularly concerned with SME development that term is not used in this report because it does not reflect a legally relevant distinction under BiH regulatory policy.

Assumptions

Remapping process of the business start-up is based on the following assumptions:

- Company: SPIRA has selected as a model for the purpose of this study a Limited Liability Company that deals in general trade including foreign trade. This assumption is used because this is the most commonly registered combination of a company type and business activity.
- Equity: The owner has invested the amount of KM 2000 as the equity of the company. This assumption is used for the reason that this is the minimum amount required by the law and the most affordable one to the average citizen of Bosnia and Herzegovina who is starting a private business. This assumption was also used in the original FSBAT study from the year 2004.
- Crafts: business activity of any kind for which business premises are required by the law.
- Use of professional services: it is assumed that all the documents required have been prepared and all necessary actions have been taken by the entrepreneur in person, without using professional services such as private attorneys, consulting companies, etc.
- Fees: amount of fee shown in the Report is the individual flat fee or total amount of fees payable as the result of calculation when a number of individual fees are charged. In the situation when there is a range of fees, the amount of minimum/maximum fee is shown.
- Costs: amount of cost shown in the Report is the individual cost or total amount of costs payable as the result of calculation when a number of individual costs are charged.
- Cost Total: Total sum of fees and costs paid.

General Information

In examining the processes associated with business registration it is useful to consider what the underlying regulatory scheme is intended to accomplish in the first place. How are these barriers to business justified? Fundamentally, registration establishes the legal status of a business (either as a legal or natural person) for purposes of general liability and government regulation. It also provides a mechanism for informing the public about a business' existence and legal status. Limited Liability Companies are also required to meet a capitalization requirement, to ensure that the corporate entity has funds with which to meet minimum liabilities (although research shows that the existence of such a requirement may do little to ensure compensation for those seeking damages from such companies).

Regulations controlling business start-up may be used to support a number of state interests, such as compliance with regulations protecting employees or the environment. One issue that arises in this context is whether the state unduly transfers indirect burdens onto businesses rather than using other, direct, mechanisms (such as enforcing tax obligations directly, rather than withholding business registration from someone who has even a small interest in an enterprise that has been delinquent in tax payments). Another issue is whether there are requirements that are simply unnecessary to protect the public interest but that delay and deter business starts. A possible example is requiring businesses to establish, through an on-site assessment/inspection, that they meet minimum technical requirements. The on-site visits add days or weeks to the time before the business can engage in commerce and employ staff. In some states, the minimum technical requirements are addressed by having the founder certify, by signature, that he or she is aware of the listed requirements and has met them - followed by, after business start, ordinary regulatory inspection to verify compliance.

The present business start-up process in Bosnia and Herzegovina is shaped by the following issues and concerns:

- Protection of creditors (including the state) from fraudulent activities of the business owner;
- Prevention of the existence of fictitious companies;
- Tax enforcement and prevention of tax evasion;
- Protection of proprietorship;
- Protection of employees;
- Protection of environment;
- Protection of public domain assets;
- Protection of public health;
- Protection of public safety;
- Protection of public order;
- Protection of natural resources;
- Urban planning enforcement and prevention of illegal construction.

While these are just the major issues that affect business start-up routinely, there are many others that become important in a particular situation, e.g., when it comes to the specific business activity, specific legal structure, foreign investment, geographical region, etc. The secondary purpose may interfere with the primary; the enforcement of non-related matters becomes more important than the business start-up itself and may burden the process to such a point that business development is suppressed. Two key questions in this situation merit further consideration:

Does the use of business start-up process as a tool to enforce non-related issues produce the desired result in reality?

Can the desired result be achieved by using means other than the business start-up process?

These two questions should be kept in mind while reading the business start-up section of this Report.

Business start-up process has three stages:

1. Pre-registration stage: relevant documents required by the law are acquired by the founder, collected from various state authorities (e.g. tax certificate, birth certificate, etc.) or legalized by the specific state authority such as the court, municipality, etc.
2. Registration stage: company/craft is registered with the court/municipality. In this stage business (company or craftsman) is recognized by the state and is legally "created".
3. Post-registration stage: all technicalities and formalities by which business becomes fully operational are completed e.g. Tax Identification Number is assigned by tax authorities, bank account is opened, compliance with minimum technical requirements is verified by the relevant state authority, etc.

These three stages equally apply both to company and craft shop start-up process.

LIMITED LIABILITY COMPANY (LLC)

Following tables present stages of the start-up process, individual procedure/action within each stage, associated costs and time frame:

Legend:
T = Time
CT = Cost Total

Pre-registration stage:

Procedure/Action	Sarajevo		Zenica		Banja Luka	
	T	CT (KM)	T	CT (KM)	T	CT (KM)
Payment of deposit	0	2000	0	2000	0	2000
Documentation collection and preparation	10	166	10	166	10	16
TOTAL:	10	2166	10	2166	10	2016

Figure 1

Note: Unlike the Federation, tax certification on outstanding tax liabilities is not required in Republika Srpska at this stage.

Registration stage

Procedure/Action	Sarajevo		Zenica		Banja Luka	
	T	CT (KM)	T	CT (KM)	T	CT (KM)
Court registration procedure	66	405	14	320	80	950

Figure 2

Post-registration stage

Procedure/Action	Sarajevo		Zenica		Banja Luka	
	T	CT (KM)	T	CT (KM)	T	CT (KM)
Stamp purchase (custom made)	2	55	2	55	2	60
Approval on suitability of premises (Sarajevo only)	3	36				
Verification on compliance with minimum technical requirements	92	170	15	200	25	241
Tax Identification Number/Statistic Number (Federation)	5	0	5	0		
Statistic Number (RS)					3	70
Tax Identification Number (RS)					5	30
Opening bank account	0	0	0	0	0	36
Company registration with the Pension Fund	2	4	2	0	2	0
Custom Number	7	47	7	47	7	47
Signage Fee payment		300		300		1000
TOTAL	111	612	26	607	44	1484

Figure 3

TIME AND COST RECONCILIATION

STAGE	SARAJEVO		ZENICA		BANJA LUKA	
	T	CT (KM)	T	CT (KM)	T	CT (KM)
Pre-registration	10	2166	10	2166	10	2016
Registration	50	405	14	320	61	950
Post-registration	111	612	26	607	44	1484
TOTAL:	171	3183	50	3093	115	4450

Figure 4

This table includes the duration of court registration process of LLCs; established by removal of open court cases from our calculation of the mean. Note that in the case of City of Zenica, no open case category was observed.

TIME AND COST RECONCILIATION

STAGE	SARAJEVO		ZENICA		BANJA LUKA	
	T	CT (KM)	T	CT (KM)	T	CT (KM)
Pre-registration	10	2166	10	2166	10	2016
Registration	66	405	14	320	80	950
Post-registration	111	612	26	607	44	1484
TOTAL:	187	3183	50	3093	134	4450

Figure 5

Figure 5 contains the duration of the court registration process of LLCs, where we have included the open cases duration in the calculations of the mean. Note that in the case of City of Zenica, no open case category was observed.

It is evident that the start-up process in Zenica is very similar to the one in Sarajevo. Major differences are in the registration and Post-registration stages as follow:

Difference in:	Sarajevo	Zenica
Registration stage :	Time: 66 days Registration documents submitted to the applicant only	Time: 15 days Registration documents submitted to the applicant and 7 institutions
Registration fee total:	405 KM	320 KM
Post-registration cost total:	612 KM	607 KM
Approval on Purpose of Premises	YES	NO
Compliance with minimum technical requirements	Jurisdiction: Cantonal Ministry of Economy-Expert Team Documents: 7 documents required Time 92 days	Jurisdiction: Municipality of Zenica-Department of Economy Documents: 3 documents required Time 25 days

Figure 6

Number of Legal Proceedings by Type

If legalization of documents as a minor procedure is excluded, the start-up of a company becomes in:

Sarajevo: **1 court case** (registration stage) and **7 administrative cases** (1 in pre-registration and 6 in post-registration stage).

Zenica: 1 court case (registration stage) and 6 administrative cases (1 in pre-registration and 5 in post-registration stage).

Banja Luka: **1 court case** (registration stage) and **5 administrative cases** (in post-registration stage).

Each case can potentially go through an entire administrative procedure from the application to the final decision on merits of the case where decision in writing is issued by the relevant state authority. This includes the right of appeal to the second instance level.

In order to understand the complexity of the start-up process, the following tables present the levels of state authorities involved and type of procedure applied:

SARAJEVO/ZENICA

Note: The pre-registration and registration stages are identical for these two cities; the post-registration stage is different.

Pre-registration stage:

AUTHORITY	PROCEDURE
Court	Court
Municipality	Administrative
Licensed court appraiser	Court
Federal Tax Administration-Cantonal Office	Administrative

Figure 7

Registration stage:

AUTHORITY	PROCEDURE
Municipal Court	Court

Figure 8

SARAJEVO

Post-registration stage:

AUTHORITY	PROCEDURE
Municipality	Administrative
Cantonal Ministry of Economy	Administrative

AUTHORITY	PROCEDURE
Federal Tax Administration-Cantonal Office Federal Bureau of Statistics-Cantonal Department	Administrative
Federal Pension Fund- Cantonal Office	Administrative
Administration for Indirect Taxation (BiH state level)	Administrative

Figure 9

ZENICA

Post-registration stage:

AUTHORITY	PROCEDURE
Municipality	Administrative
Federal Tax Administration-Cantonal Office Federal Bureau of Statistics-Cantonal Department	Administrative
Federal Pension Fund- Cantonal Office	Administrative
Administration for Indirect Taxation (BiH state level)	Administrative

Figure 10

BANJA LUKA

Pre registration stage:

AUTHORITY	PROCEDURE
Basic Court	Court
City Administration	Administrative
Licensed court appraiser	Court

Figure 11

Registration stage:

AUTHORITY	PROCEDURE
Basic Court	Court

Figure 12

Post-registration stage:

AUTHORITY	PROCEDURE
City Administration	Administrative
Bureau of Statistic RS	Administrative

AUTHORITY	PROCEDURE
Tax Administration of RS	Administrative
Pension Fund	Administrative
Administration for Indirect Taxation	Administrative

Figure 13

Documents required

The analysis of the registration stages shows that in the majority of cases state authorities require founder/company to submit copies of documents produced by other state authorities. Same documents produced in early stages are required repeatedly at later stages. These documents have to be copied and sometimes legalized before the relevant state authority. When these duplications are considered, this decreases number of unique documents needed.

Total number of documents submissions required is:

SARAJEVO

Stage	Number of documents
Registration	9
Post-registration	35
TOTAL:	44

Figure 14

The following table presents documents that are required repeatedly:

DOCUMENT	# OF TIMES		PRODUCED BY
	Required	Legalized	
Company registration	6	3	Court
Proof of title over premises (land registry certificate) if premises are owned	3	1	Court
Lease agreement (if premises are leased)	3	3 (by tax authorities)	Company
Decision or contract on founding the company	2	1	Founder(s)
TIN Certificate	4	1	Tax Administration

Figure 15

Note: Proof of Title or Lease Agreement is required in the alternative, so the total does not add the categories together.

This decreases the real number of documents to **35**.

ZENICA

Stage	Number of documents
Registration	9
Post – registration	25
TOTAL:	34

Figure 16

The following table shows which documents are required repeatedly:

DOCUMENT	# OF TIMES		PRODUCED BY
	Required	Legalized	
Company registration	5	4	Court
Proof of title over premises (land registry certificate) if premises are owned	2	0	Court
Lease agreement (if premises are leased)	2	0	Company
TIN Certificate	3	0	Tax Administration

Figure 17

This decreases the number of different documents required to **26**.

BANJA LUKA

Stage	Number of documents
Registration	8
Post – registration	31
TOTAL:	39

Figure 18

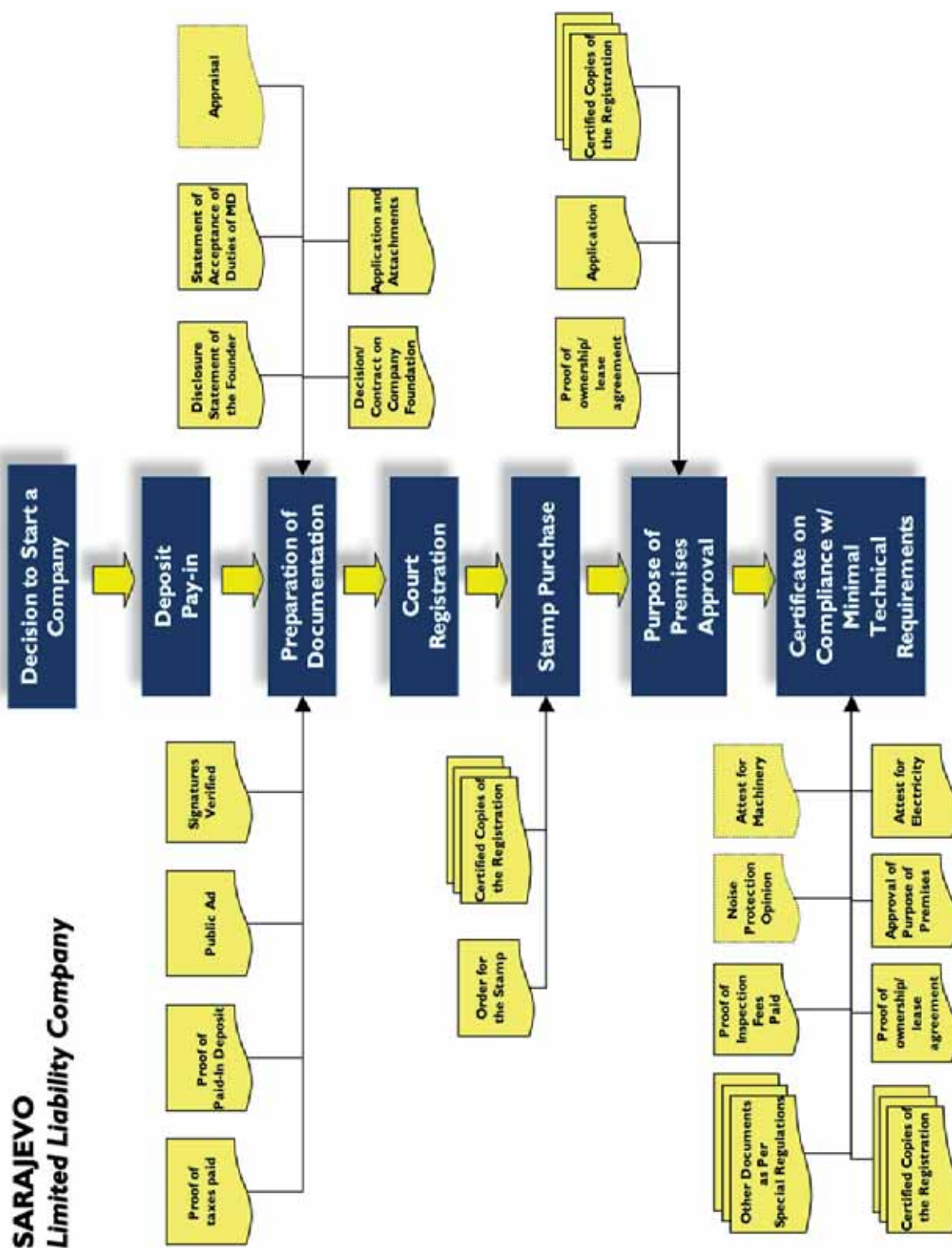
The following table presents documents that are required repeatedly:

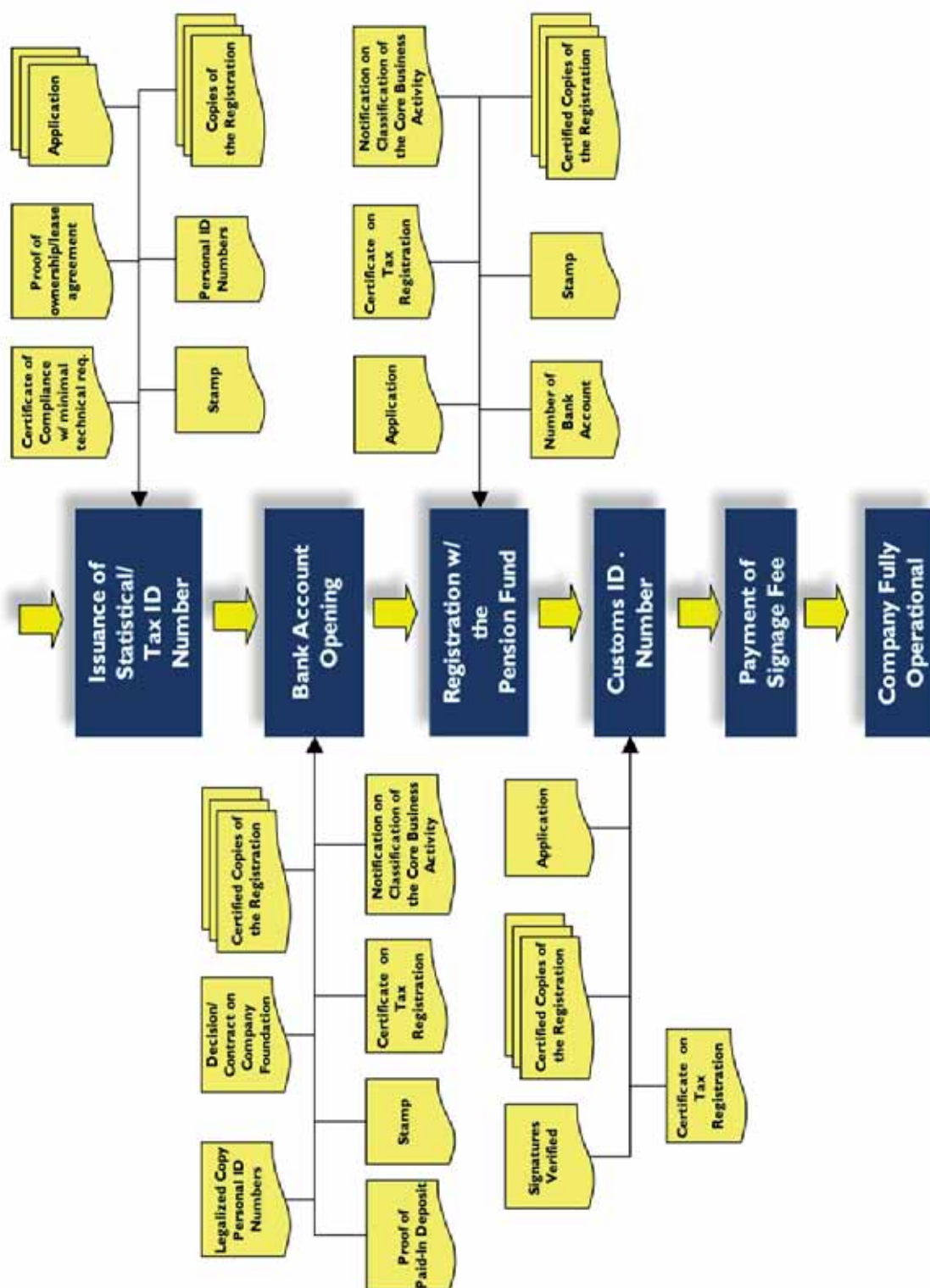
DOCUMENT	# OF TIMES		PRODUCED BY
	Required	Legalized	
Company registration	7	7	Court
Copy of the Personal ID card of the owner/director	3	2	Police Authorities

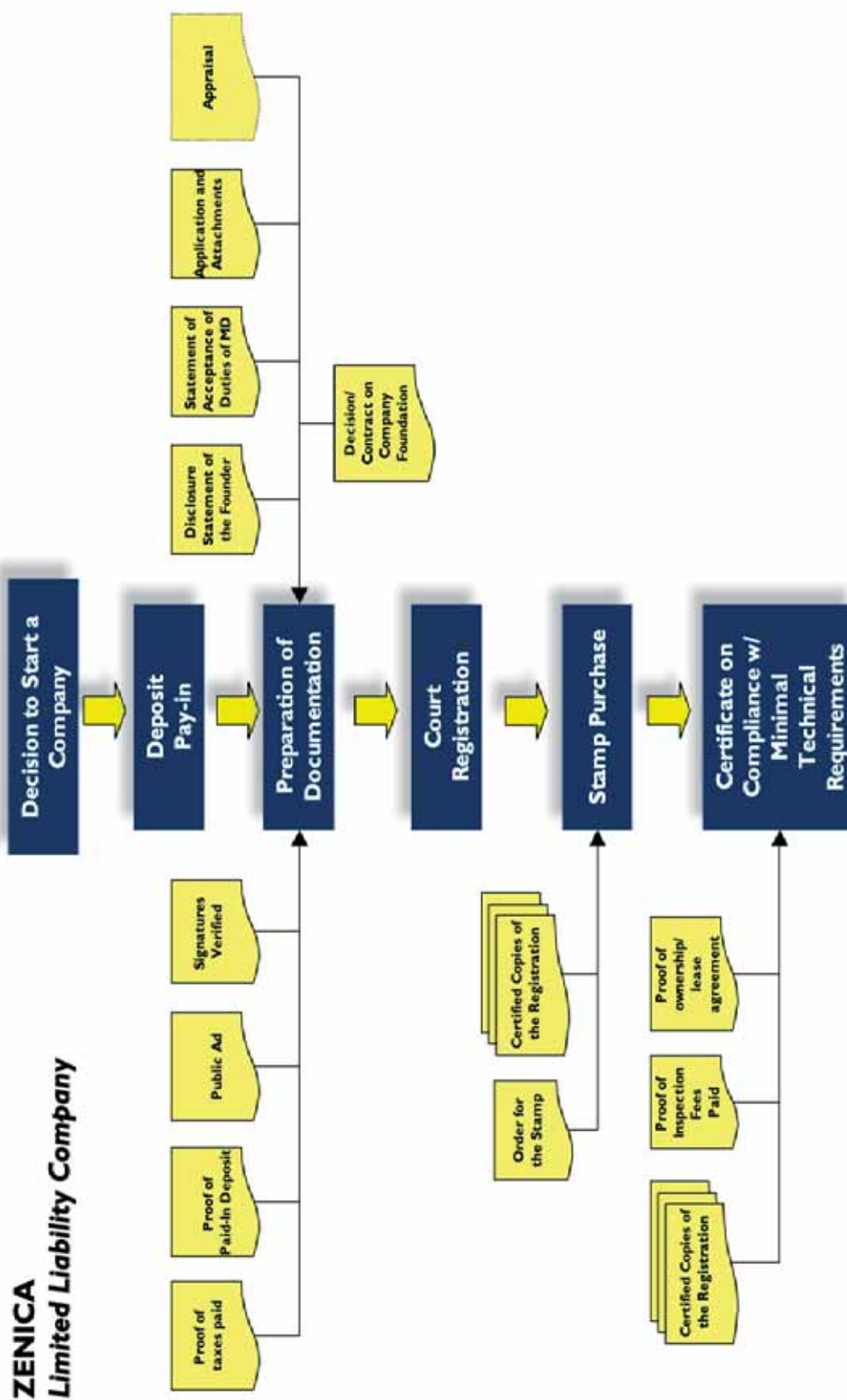
DOCUMENT	# OF TIMES		PRODUCED BY
	Required	Legalized	
Signatures of authorized persons	4	2	Company
Notification from Statistics Bureau	2	2	Bureau of Statistics
TIN Certificate	3	2	Tax Administration

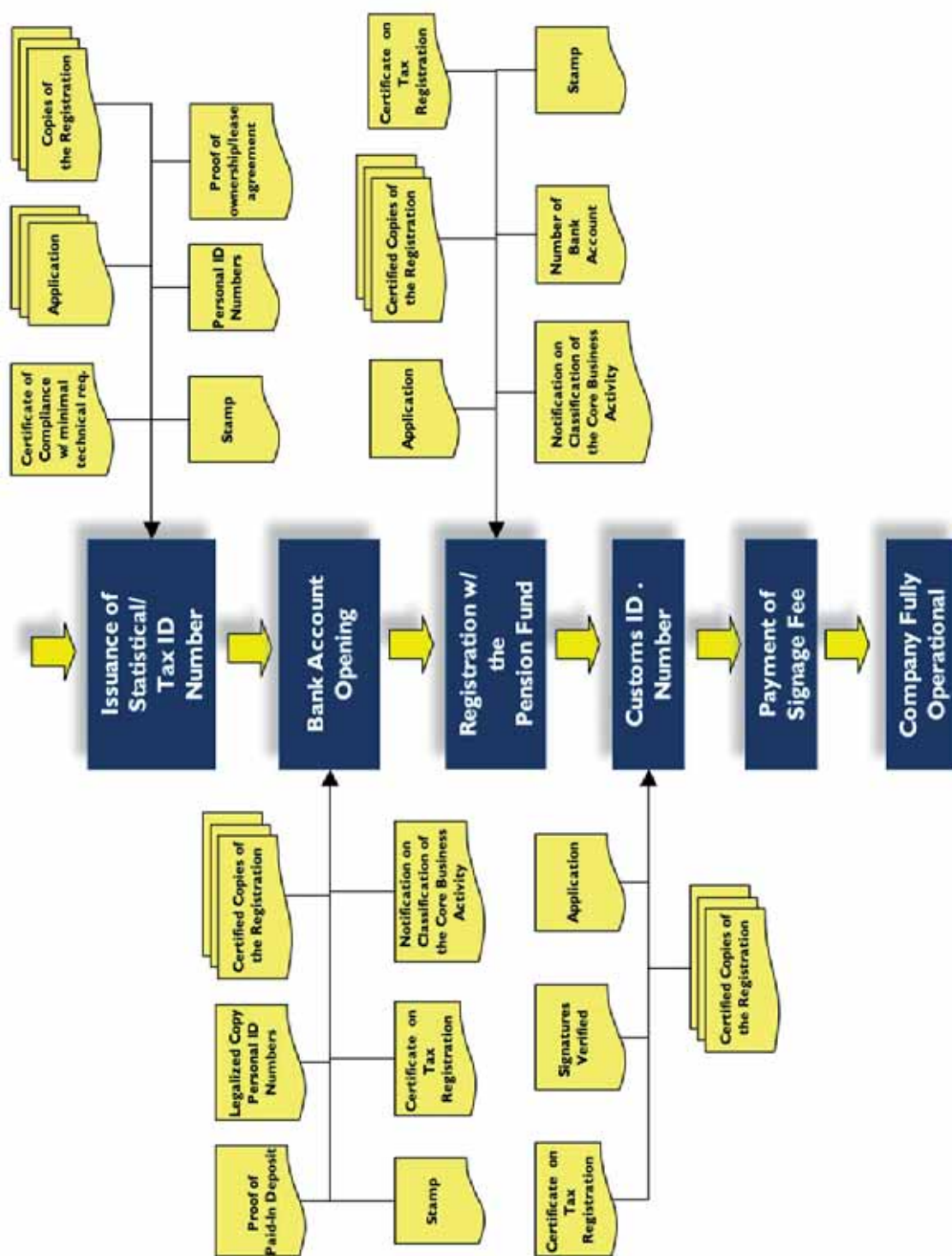
Figure 19

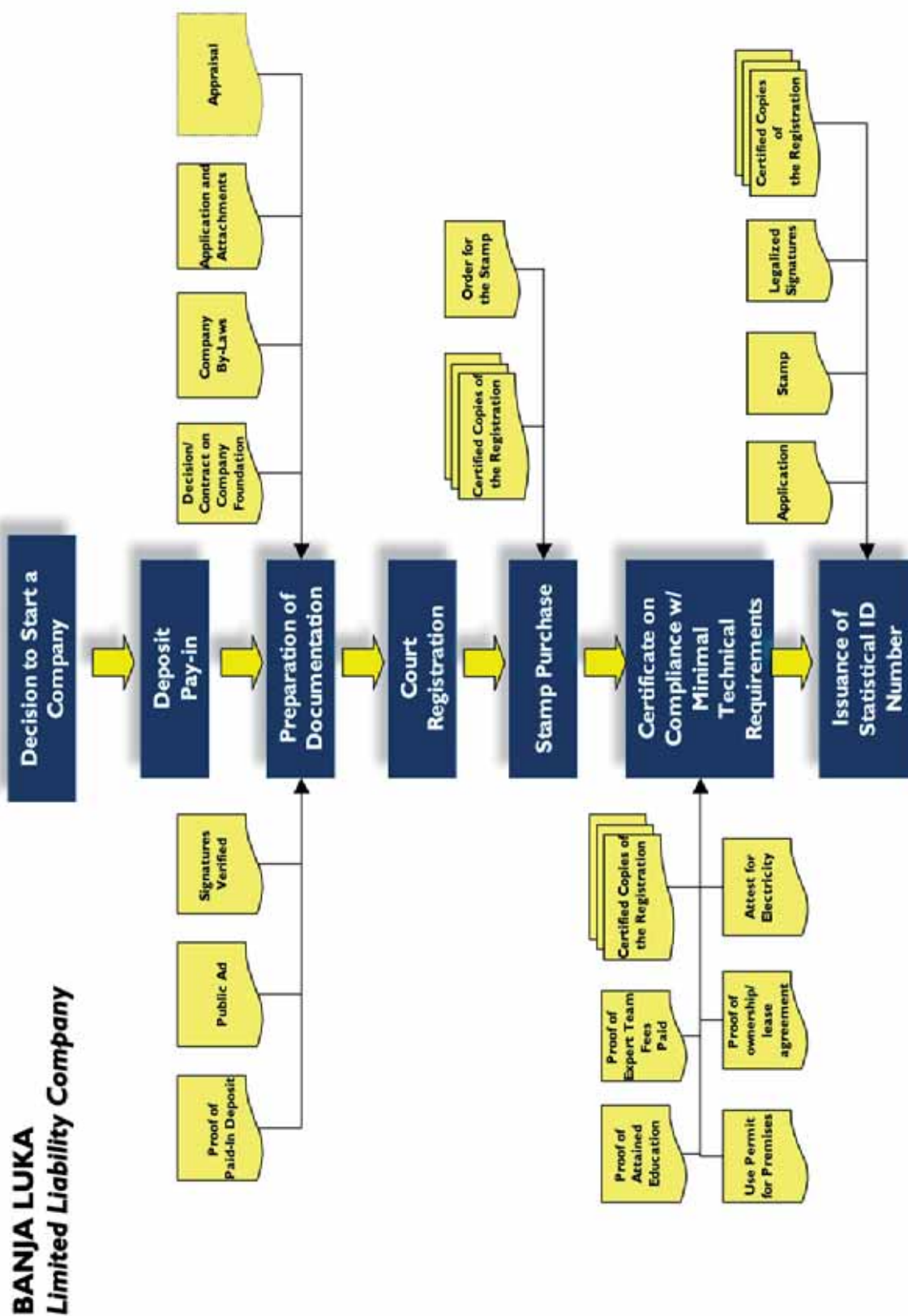
This decreases the number of different documents required to **21**.

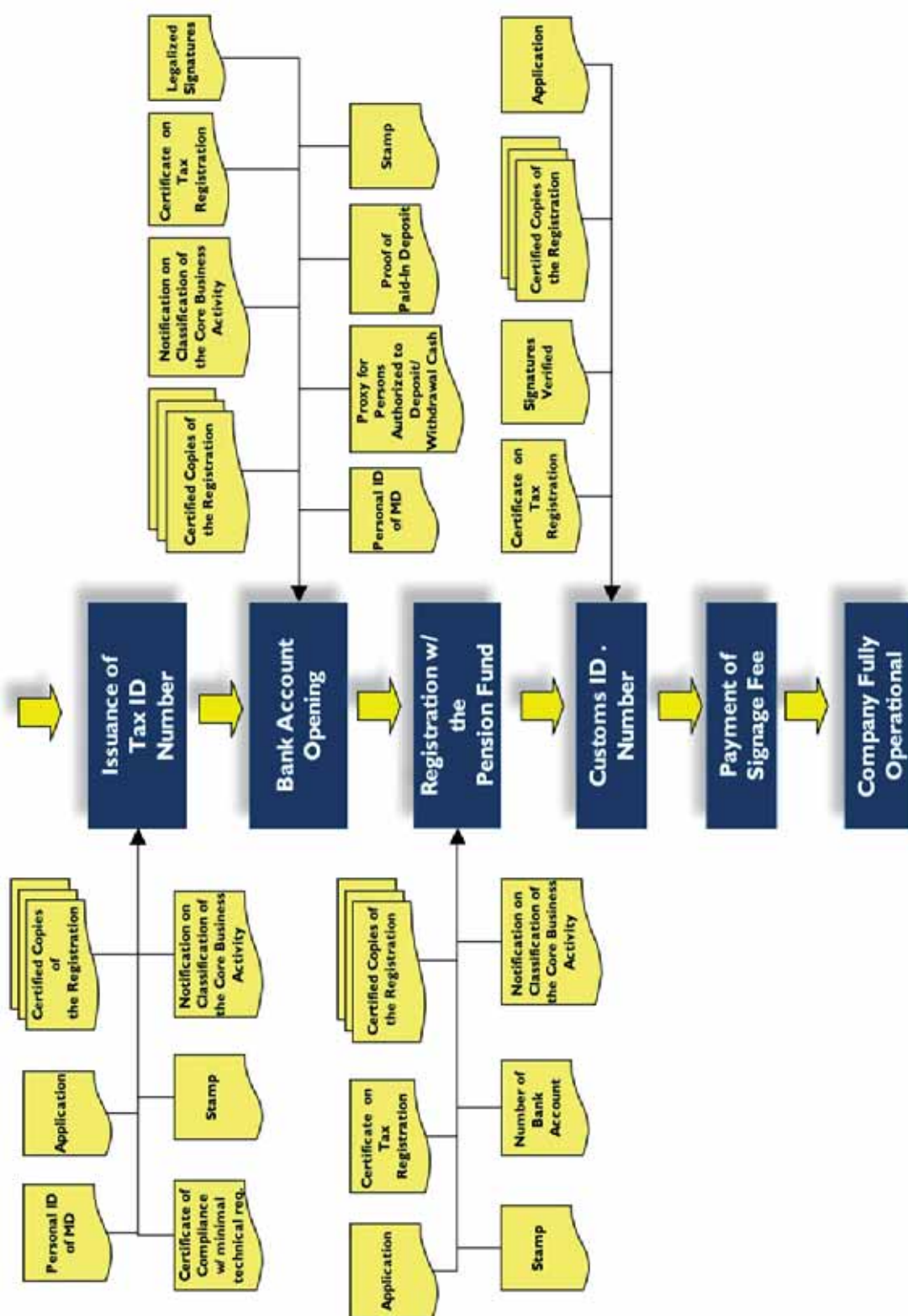












CONCLUSIONS

Findings suggest that the current start-up process for a company is not a course with clear steps and rules carefully designed from the first step to the last. It is, in reality, a convoluted process involving a number of legal procedures (court and administrative) before different state authorities which are basically inactive, leaving the process to be driven entirely by the entrepreneur/company. Communication between different authorities involved is neither harmonized nor streamlined; it is, in fact, typically nonexistent. Likewise, this same dynamic applies to actions different agencies perform in the process. Very often, it is the entrepreneur or company who must navigate between the different state authorities whose responsibility is integral to the start-up process. This is why the entrepreneur or company is required to repeatedly submit to state authorities the same documents which are produced by other state authorities and repeatedly return to the same authority in different stages of the process. To illustrate this situation, the entrepreneur can be described as a boat that is sailing from one isolated island to another one in order to complete a journey.

In conclusion, company start-up is heavily burdened by several issues giving rise to a climate which is needlessly time-consuming, fragmented and onerous for potential investors (both domestic and foreign alike).

These issues are:

The nature and role of state authorities in the process

These entities must examine all details of the case - even those not directly related to the issue - and either accept or reject the request of the applicant. This is conducted in a legal procedure (court or administrative) which considers the application, the decision on merits of the case, and possibility the appeal to the second level instance. However, the process itself is slow and cumbersome because every court or administrative procedure along the way employs these elements. This approach results in lengthy procedures in each case which are then processed by an inefficient and slow internal administration.

Broad jurisdiction

Each state authority has a full discretionary right to decide on issues under its jurisdiction, which are broadly set. To a great extent, a final decision is rendered by a personal interpretation of the law or factual situation by the relevant state official. This is particularly the case when it comes to "legal standards," where detailed criteria cannot be set. For instance, a legal standard prohibits registration of two companies with similar or identical names in the territory covered by the same registry court. In one case, the proposed company name MAESTRAL was rejected due to the existence of a preexisting company with name MAESTRO. The judge found too much similarity between these two names: 6 identical letters out of 8 in total.

Enforcement of extraneous matters

Frequently, the court or administrative procedure mandates compliance with issues having nothing to do with a company's start-up or registration process. For example, when an entrepreneur files for registration before the court, he or she must submit a

certificate on his or her personal tax liabilities. Likewise, to be in compliance with the minimum technical requirements specific to the registered company's business activity, the company must submit documentation related to the occupancy of the premises. These differing requirements place an unreasonable burden on an entrepreneur when non-related urban planning matters are linked to business start-up. While each of these steps may be important, they should be enforced separately, rather than being tied to an unrelated process. The purpose of business registration is to create a company, not to enforce matters that are under the jurisdiction of other state authorities.

Complexity of the political structure of Bosnia and Herzegovina

Too many levels of government are involved both in lawmaking and administrative jurisdiction over the start-up process. As a result, it is almost impossible to identify an accurate number of laws that affect the domain of business start-up. The sheer number of these laws and regulations makes them difficult to compile. Additionally, the application of these laws varies according to company circumstances. Because these particular laws and regulations are subject to ongoing change, this category can be described as an "open space" of the legal system, making it unpredictable.

A legal system that inconsistently applies different rules for different parts of the country even on the municipal level. Differences are mostly based on the geographical location and sort of business activity. Today, it is impossible to predict key elements in business start-up process (costs, length of the process, number of steps and documentation required) without knowing two facts: the sort of business activity and specific location of the business.

The statistical analysis generated for this report shows a significant difference between the time needed to register a company in Zenica, Sarajevo and Banja Luka, with the Zenica court being the fastest of the three. The reasons for expediency are multiple. However, all of them are circumstantial. One of the main reasons is the size and the overall economic situation in ZE-DO canton. The court in Zenica deals with a much lighter flow of applications: 543 in Zenica versus 1169 in Sarajevo in the three month period (September, October and November 2005). In addition, a lesser number of state authorities and fewer levels of government in Zenica are involved in the registration process. In Sarajevo, on the other hand, there is a Cantonal Experts' Team dealing with minimum technical requirements and certificate on business suitability as the additional step in the process. Certificate on business suitability is not required in Zenica municipality.

Legal system shortcomings: the system is not able to rectify its own failures. Laws that are applied in legal procedures during company start-up process presume that the legal system works in full compliance with relevant laws. But very often, the entrepreneur faces problems when some legal requirement cannot be met due to the failure of the legal system to anticipate a situation in real life that is required as a prerequisite. This is most specifically illustrated in the conundrum of one state authority requiring a document that another relevant state authority is either not mandated to generate or cannot produce for other reasons. Urban planning matters become the most frequent problem in the post-registration stage of the start-up process. For instance, an entrepreneur is required to present the valid proof of ownership of real estate, but the required document cannot be produced by the relevant state authority due to the unclear land registries (e.g. building is not recorded in the cadastre which is supposed to be done by the state). In this kind of "twilight zone" situation, state officials are forced to improvise

or make arbitrary decisions based on their private rules. To their credit, many officials work hard to find ways to meet the needs of businesspersons and the general public.

Poor organization and obsolete equipment: state authorities involved into the business start-up process are neither organized nor adequately equipped, resulting in a slow and inefficient service provided to the entrepreneurs and companies, inadequate enforcement of the law etc.

Unlike neighboring countries (Croatia, Serbia and Montenegro), the Court Registry is not accessible online.

It is evident that under current circumstances, the institutions involved and procedures applied are not conducive to starting businesses where time plays a crucial role. The present system was designed for an environment which no longer exists; back in socialist times, a private business was considered an ideological enemy of the system. Successful private business represented a denial of the socialist concept of economy. Therefore, the legal framework was set in the way to generate as many obstacles as possible in order to discourage private entrepreneurship and to impede the profitability of existing private businesses. State-owned businesses were in a preferable position which allowed them to bypass the legal requirements that were strictly enforced against private businesses.

The current state administration has, more or less, inherited the same legal framework and has maintained the same attitudes and mentality when it comes to the treatment of private businesses. Private business start-up is regarded as a cash cow, a source of revenue.

The new reality requires a new approach to this matter. Since private business is no longer an enemy of the state, the new approach requires an entirely new concept that will stimulate and facilitate private business start-up. For instance, if the company start-up process becomes a procedure of its own gender (*sui generis*), neither administrative, nor the court procedure, but a procedure purposely designed for the business start-up, many problems will disappear.

The impact of the Framework Law on the Registration of Business Entities (and the two implementing laws at the entity level), developed under the sponsorship of DFID, has yet to be determined. It is clear that some steps are being eliminated, such as the requirement of tax certification re outstanding tax liabilities⁵. In fact, the partial implementation of the RS Law in Banja Luka has already caused this to be dropped from court registration there. And provisions, such as Article 56 (Written Errors)⁶ of the RS Law will, when fully implemented, address institutional practices that this report identifies as especially burdensome for businesses. The law is designed to effectuate substantial structural and systemic improvements. Implementation is expected to be completed in several months, when the software supporting the registration database is in place.

⁵ Although partial implementation of the legislation has occurred, the data collected for this report largely pre-dates these changes and the findings here do not reflect the impact of the new business registration laws.

⁶ This provision directs that where there are apparent errors that the court can determine the correction for with certainty (e.g., misspelled iteration of name somewhere in the document) that it cannot delay processing of the registration. Instead, the applicant is to sign an errata note, prepared by the court, when he or she comes to collect the registration.

Major improvements are expected to be made in the following areas:

- The registry court must complete the work on company registration within a 5 day period of time;
- The court assigns a “registry number” to the company which is unique, unchangeable and non-repeatable. In addition to this, the registry court assigns a TIN and Custom Number (if applicable) to the company in the process of registration. In this way, two steps are moved from the post-registration to registration stage;
- The data recorded in the Registry are standardized and identical for both Entities and Brcko District;
- A centralized database of companies on the level of BiH is established;
- Documents required and registry procedures are standardized and identical in both Entities and Brcko District;
- The registration certificate is delivered to: the Tax Administration, Municipality, Bureau of Statistics, Pension Fund, Customs and the relevant state authority that has jurisdiction over the business activity of the company. Therefore, there is no need to have the entrepreneur make copies of registration documents at later stages of the start-up process.

These changes are designed to shorten and simplify the procedure of business registration and start-up in general. Since the law is still not fully implemented, real impact on the process has yet to be assessed.

HIGHLIGHTS FROM QUESTIONNAIRES, INTERVIEWS AND DOCUMENTS COLLECTED

Sarajevo

Comments from Businesses:

Process of business registration (and the company's start-up in general) is described as complicated, expensive and exhausting with many unnecessary steps. Procedures are experienced as “squeezing” money from the entrepreneur with no administrative help provided. Each step in this process is seen as nothing but a “toll-gate” when a required fee to the state is paid.

With respect to compliance with minimum technical requirements, a company must apply and pay a fee for the inspection of a business premises even if rented from a specialized company like UNITIC Business Center. Because UNITIC has already passed the inspection process and is licensed for leasing to businesses, this kind of compulsory inspection fee is viewed as unnecessarily tedious since the legal requirement was essentially fulfilled upon the lessor-company's contract with UNITIC. Moreover, in practical terms, since no inspector comes to inspect any company located there, the situation is seen as a typical example of the state extracting fees without justification or providing any service or benefit to the company.

Banks have varying procedures and requirements for opening corporate accounts: when an owner interviewed by the SPIRA team sought to open a corporate account for his company, the bank required documentation which no other bank required.

After a company is registered with the Court, registration documents have to be copied and each copy legalized at the relevant Municipality office numerous times. The number of copies needed to complete other administrative issues is unpredictable and businessmen waste a lot of time in copying documents and standing in lines for their legalization.

Comments from Judges in Sarajevo Municipal Court:

- 95% of applications for registration of companies are returned for correction
- The most frequent mistakes found in applications are missing documents, missing approvals issued by the state, misspelled names, wrong dates, forms that are filled out incorrectly, etc.
- Applications submitted by private attorneys are much “cleaner” and these applications go through the system much faster. Documentation prepared by attorneys is usually better and with no corrections needed;
- The monthly quota of cases is 80 per judge;
- The current backlog of registry cases in Sarajevo is 800 and the court is six (6) months behind in its caseload. New cases are pending until the backlog is cleared.
- The current system of registration is slow and complicated. It is hoped that the new system developed by DFID will be much improved.

Comments from Private Attorneys:

- The current system of company start-up is frustrating, slow with many duplicated and/or unnecessary steps and/or documents;
- The registry is viewed as extremely slow when information is required by a third party. It takes several weeks to get information on a specific company.

Comments from Sarajevo Cantonal Ministry of Economy-Expert Team:

The most frequent complaint is a policy requiring compliance of the company's premises with laws and bylaws regulating urban and spatial planning. Legally, a company is obligated to have its business premises either owned or leased. A small number of businesses may operate without having permanent business premises, but the company's premises must have a use permit regardless of whether they own or rent. The use permit is the final step in the process of making a building fully legitimate. All issues regarding ownership need to be resolved and an urban permit, building permit and technical inspection certificate ought to be obtained in order for a use permit to be issued. Usually this is not the case and solving this problem takes time if it happens at all. Often, it becomes impossible due to reasons beyond the landlord's control. While the concept of compliance with minimum technical requirement is designed for an ideal situation with a well-organized and accurate land registry system, updated cadastre and efficient state authorities, none of these exists in reality. In order to find a way around this problem, the Cantonal Government has recently “softened” the requirements related to urban planning: it suffices now to have a building permit to meet the criterion of minimum technical requirement related to urban planning. This “softening”, while conforming to reality, does not comply with the Law. According to the official statistics, 22% of cases are impossible to decide on, either positively or negatively due to ownership or urban planning problems caused by the deficiencies of the legal system.

A baker has illegally built a building in Novo Sarajevo. The building was duly connected to utilities (water, gas, sewage, electricity, etc) by public utility companies although the law does not allow for illegal buildings to gain access to public utilities. The baker then applied to get a verification of compliance with minimum technical requirements. Although the premises were in perfect compliance with minimum technical requirements, the Baker's application was rejected by the Sarajevo Canton Experts' Team due to the fact that the owner was not able to present proof of ownership. Pursuant to the existing legal provision, the Experts' team reached a decision in which the issue of legality has prevailed over the substantial issues of compliance. The experts' team in charge of determining the compliance with minimum technical requirements, is, inadvertently, put in a position of arbiter deciding on legal matters, instead of technical ones.

Even if premises are leased, the company must enclose the proof of ownership from the Landlord. If the lease agreement has been signed by one of the co-owners but not the other(s), the application will be rejected. In addition, the Lease Agreement must be legalized by the tax administration. Otherwise, the Expert Team will not accept it as a valid document.

The technology and internal procedures of the Expert Team are on the level of the 1950's: inspectors prepare documents in handwriting that are later re-typed on a typewriter by a typist. There is not a single computer involved in the work process. The same document goes back and forth several times. This situation significantly decreases the efficiency of this authority.

Zenica

Comments from Municipal Court in Zenica

The framework Law on the Registration of Business Entities is currently applied by the Registration Judge, only in one aspect: the Court sends copies of company registration documents to 7 addresses: Tax administration, Statistic, Custom department, Chamber of commerce, Pension Fond, Municipality and to the relevant Ministry.

Although the registration judge in Zenica claims that he applies the new law on registration of companies, from steps in the procedure and documents required it is obvious that the old law is applied to a great extent.

Comments from Tax Administration - Cantonal Office Zenica

Officials at the ZE-DO Cantonal Tax Office reiterated that there was no point in issuing certificate on outstanding tax liabilities as a pre-requisite for registration. It was emphasized that since the cantonal taxation offices are not networked yet, there is no guarantee that the tax payer who does not have an outstanding tax liability in ZE-DO Canton, does not have liabilities in other cantons, the RS or Brcko District.

Comments from the Business Service Center in Zenica

The BSC has been created as an Agency of the ZE-DO Government. GTZ funds the director's position. The purpose of the Center is to support and assist companies and entrepreneurs in two areas:

One Stop Shop – giving support and advice to the companies and entrepreneurs in the administrative procedures. All requests for permits, approvals and other procedures on

Cantonal level can start at the BSC. All necessary forms are available at the BSC. BSC staff will help citizens to fill out the forms and obtain necessary documents. BSC has contact persons in each municipality. With the help of the contact persons, each person can start this process in each ZE-DO Canton municipality, as well.

BSC staff then forward the forms and documents to the relevant ministries. The Center makes sure that the applicant gets a response within the period prescribed by law and receives advice on how to proceed afterwards.

Information & service - BSC collects all important and relevant business information that might help citizens - information about financing and credit facilities, information about free construction sites and space for business purposes, info on all important laws and regulations, and information about government's and other organizations' support for businesses.

Banja Luka

Comments from Private Attorneys:

A case where the Ministry of Foreign Trade and Economic Relationship of Bosnia and Herzegovina failed to issue notification that a foreign investor is registered with the Ministry since July 1, 2005 (this has to be done according to the Law on Foreign Investments) was presented to SPIRA Team. The reason why the Ministry has not completed the procedure is unknown. A copy of the protest letter sent to the Ministry was provided to the SPIRA team;

The current system of company start-up is viewed as slow, frustrating and too fragmented across different state authorities: the court, city administration, tax administration, bureau of statistics, etc. This requires different types of legal procedures to be involved across a single case: the court and administrative procedure. Company start-up should be one single procedure at one single state authority. It appears that the biggest problem is minimum technical requirements that must be met by the company: the system should be based on the presumption that these requirements are met at the moment of company registration. The premises of the company should be inspected after business start-up. The company should start the business operation immediately and without inspection of premises. Exceptions should be made only in particular business activities where public health or public safety can be jeopardized (e.g. sale of drugs or opening of a gas station).

Comments from Basic Court in Banja Luka - Registration Judge

- The Court applies the new laws on the registration of companies. These laws cannot be fully applied due to the fact that the central registry database is not yet operational. However, the laws are applied in the following aspects: documentation required, deadlines and procedure (except making entries into the registry which is still done according to the old law).
- Tax certification on outstanding tax liabilities of founder(s) is not required prior to registration process.
- Applications submitted by private attorneys are much "cleaner" and these applications go through the system much faster. Documentation prepared by

attorneys is much better and communication with them is much better than in a case when the entrepreneur does all the work himself.

- The monthly quota of cases is 65 per judge.

INDEPENDENT CRAFT SHOP OR SELF-EMPLOYMENT BUSINESS ACTIVITY START-UP

Starting an independent craft shop is a process almost as arduous as starting a Limited Liability Company. Moreover, while the latter has been the subject of a reform introduced through DFID's and other donor-funded projects, the process of starting an independent craft-shop has been left unchanged since the socialist times.

Therefore, the SPIRA project plans to concentrate on all three stages of the craft-shop start-up process while building on what GAP and other USAID-projects have achieved so far in their effort to improve the overall efficiency of municipal administrations through BiH by establishing One-Stop-Shops inside the municipal building.

Although the key registration document – the Approval to start an Independent Craft Shop or Self-Employment Activity - is obtained from the municipality, there are more than a dozen requirements and half a dozen permits at various municipal, cantonal and entity-level offices that need to be obtained before the registration certificate is issued by the relevant municipal department. In fact, the very first step a craft shop founder needs to make in the registration process is to obtain a certificate of business ability issued by a local Center for Social Welfare. This certificate does not represent a proof of the requester's work ability but merely states that he/she is not on the list of the persons under legal guardianship due to mental illness, which that Center keeps the record of.

The craft-shop founder will, eventually, get his work ability assessed by an occupational medicine specialist at the local medical institution, but only after he has waited for a day to get the aforementioned certificate from the local Center for Social Welfare and paid the administrative fee there. This requirement is a relic of the socialist-times procedures that both Serbia and Croatia did away with long time ago. In Bosnia and Herzegovina, it still remains a part of procedures proscribed in both entity laws on Craft⁷.

Moreover, in FBiH the administrative procedure of starting a craft-shop is also used for tax enforcement purposes with the certificate on non-existence of tax liabilities being made a requirement for the registration of a craft-shop.

In the RS, on the other hand, this certificate is not required in the process of craft shop registration.

Verification of the compliance with minimum technical requirements is the most time-consuming step in the craft registration process. This certificate is required for crafts engaged in catering services, tourism, transportation and trade.

⁷ The FBiH Law on Craft, (FBiH Official Gazette, 52/02; 29/03); the RS Law on Crafts and Entrepreneurship (Official Gazette RS, 16/02; 39/03)

In order to get a certificate verifying compliance with minimum technical requirements, with an application, the craft shop owner needs to enclose a) a proof of the ownership of the business premises, [a deed book excerpt or a lease contract if the premises are leased], b) documentation certifying electric installation and tap water quality and c) a proof of payment of the fee for the experts' commission on-site visit.

In Zenica and Banja Luka, the Experts' team in charge of verifying the minimum technical requirements is comprised of municipal officials from relevant departments. The request for their on-site visit is made at the municipal building. In Sarajevo, on the other hand, this Experts' team is made up of cantonal inspectors with the Sarajevo Canton Department of Economy. In order to get his/her premises verified as one meeting minimum technical requirements, the craft founder needs to make additional trips to the Cantonal Inspectorate premises to make this request. If the Municipal Departments of Economy within the Sarajevo Canton were networked with the Inspectorate of the Cantonal Department of Economy, this trip would have been unnecessary. However, not only does such a network not exist, but there is not a single computer inside the Inspectorate.

The costs of craft-shop registration differ significantly due to differences in signage fees for various business activities. In all three municipalities, the founders of night bars pay the maximum fee of KM 3000, while founders of traditional craft shops (tailors, watch repair, etc.) pay the minimum signage fee which differs from municipality to municipality: KM 100 in Zenica, KM 50 in Sarajevo and KM 400 in Banja Luka.

The following diagrams depict the steps necessary to start an independent craft-shop in the municipality of Stari Grad Sarajevo, Zenica and Banja Luka.

CRAFT SHOP REGISTRATION

The following tables present stages of the start-up process, individual procedures/actions within each stage, associated costs and time frame:

Pre-registration stage

Procedure/Action	Sarajevo		Zenica		Banja Luka	
	T	CT (KM)	T	CT (KM)	T	CT (KM)
Payment of the application fee	0	80	0	200	0	150
Documentation collection and verification of compliance with the minimum technical requirements (expert team)	11	324	15	173	5	48
TOTAL:	11	404	15	373	5	198

Figure 20

Registration stage

Procedure/Action	Sarajevo		Zenica		Banja Luka	
	T	CT (KM)	T	CT (KM)	T	CT (KM)
Registration procedure	7	0	15	0	17	0

Figure 21

Post-registration stage

Procedure/Action	Sarajevo		Zenica		Banja Luka	
	T	CT (KM)	T	CT (KM)	T	CT (KM)
Stamp purchase (custom made)	2	55	2	55	2	60
Tax Identification Number/Statistic Number (Federation)	5	0	0	5		
Statistic Number (RS)					3	70
Tax Identification Number (RS)					5	2
Opening bank account	0	0	0	0	0	36
Registration with the Pension Fund	2	4	2	0	2	0
Signage Fee payment		50/550		150/500		400/3000
TOTAL	9	109/609	4	210/560	12	568/3168

Figure 22

TIME AND COST RECONCILIATION

STAGE	SARAJEVO		ZENICA		BANJA LUKA	
	T	CT (KM)	T	CT (KM)	T	CT (KM)
Pre-registration	11	404	15	373	5	198
Registration	7	0	15	0	17	0
Post-registration	9	109/609	4	210/560	12	400/3000
TOTAL:	27	513/1013	34	583/933	34	598/3198

Figure 23

If legalization of documents as a minor procedure is excluded, the start-up of company becomes:

Sarajevo: **9 administrative cases** (6 in pre-registration, 1 in registration stage and 2 in post-registration stage).

Zenica: **6 administrative cases** (4 in pre-registration, 1 in registration stage and 1 in post-registration stage).

Banja Luka: **5 administrative cases** (2 in pre-registration, 1 in registration stage and 2 in post-registration stage).

Each case goes potentially through the entire administrative procedure: from the application to the final decision on merits of the case where a decision in writing is issued by the relevant state authority. This includes the right of appeal to the second level instance.

In order to understand the complexity of the start-up process, the following tables present the levels of state authorities involved and type of procedure applied:

SARAJEVO

Pre-registration stage:

AUTHORITY	PROCEDURE
Municipality	Administrative
Municipal Court Sarajevo	Court
Municipality	Administrative
Municipal	Administrative
Municipal Court in Sarajevo	Court
Cantonal Ministry of Economy	Administrative
Pension Fund	Administrative
Tax Administration	Administrative
Municipality	Administrative
Municipality	Administrative
Municipality	Administrative

Figure 24

Registration stage:

AUTHORITY	PROCEDURE
Municipal Department of Economic Relations	Administrative

Figure 25

Post-registration stage:

AUTHORITY	PROCEDURE
Federal Tax Administration-Cantonal Office	Administrative
Federal Bureau of Statistics-Cantonal Department	

Figure 26

ZENICA

Pre-registration stage

SECTION	ACTION	AUTHORITY	PROCEDURE
B	1.	Municipality	Administrative
	2.	Medical institution	Administrative
	5.	Tax administration	Administrative
	7.	Municipality	Court
	8.	Municipal Court	

Figure 27

Registration stage:

SECTION	ACTION	AUTHORITY	PROCEDURE
A		Municipal Department of Economic Relations	Administrative

Figure 28

Post-registration stage:

SECTION	ACTION	AUTHORITY	PROCEDURE
B		Federal Tax Administration-Cantonal Office Federal Bureau of Statistics-Cantonal Department	Administrative

Figure 29

BANJA LUKA

AUTHORITY	PROCEDURE
City Administration Basic Court in Banja Luka Medical institution Pension Fund	Administrative Court Administrative

Figure 30

Registration stage:

AUTHORITY	PROCEDURE
City Administration - Department of Economic Relations	Administrative

Figure 31

Post-registration stage:

AUTHORITY	PROCEDURE
Statistics Bureau of RS	Administrative
Tax Administration	Administrative

Figure 32

Documents required

Analysis of the registration stages show that the municipal authorities require from craft shop founders to submit copies of documents produced by other municipal, cantonal or state authorities. The same documents produced in early stages are required repeatedly at the later stages in their original form or as the legalized copies.

The total number of documents required is:

SARAJEVO

Pre-registration	12
Registration	1
Post-registration	11
TOTAL:	24

Figure 33

The following table presents the documents that are required repeatedly:

DOCUMENT	# OF TIMES		PRODUCED BY
	Required	Legalized	
Craft Shop Registration	3	1	Municipal Department
Proof of title over premises (land registry certificate) or lease agreement	2	1	Court or Craftsman
Copy of an ID	3	2	CIPS

Figure 34

This situation decreases the number of unique documents required to **19**.

ZENICA

Pre-registration	10
Registration	
Post-registration	9
TOTAL:	19

Figure 35

The following table presents documents that are required repeatedly:

DOCUMENT	# OF TIMES		PRODUCED BY
	Required	Legalized	
Craft Shop Registration	3	3	Municipal Department
Proof of title over premises (land registry certificate) if premises are owned	2	1	Court

Figure 36

This situation decreases the number of unique documents required to **16**.

BANJA LUKA

Pre-registration	12
Registration	
Post-registration	12
TOTAL:	24

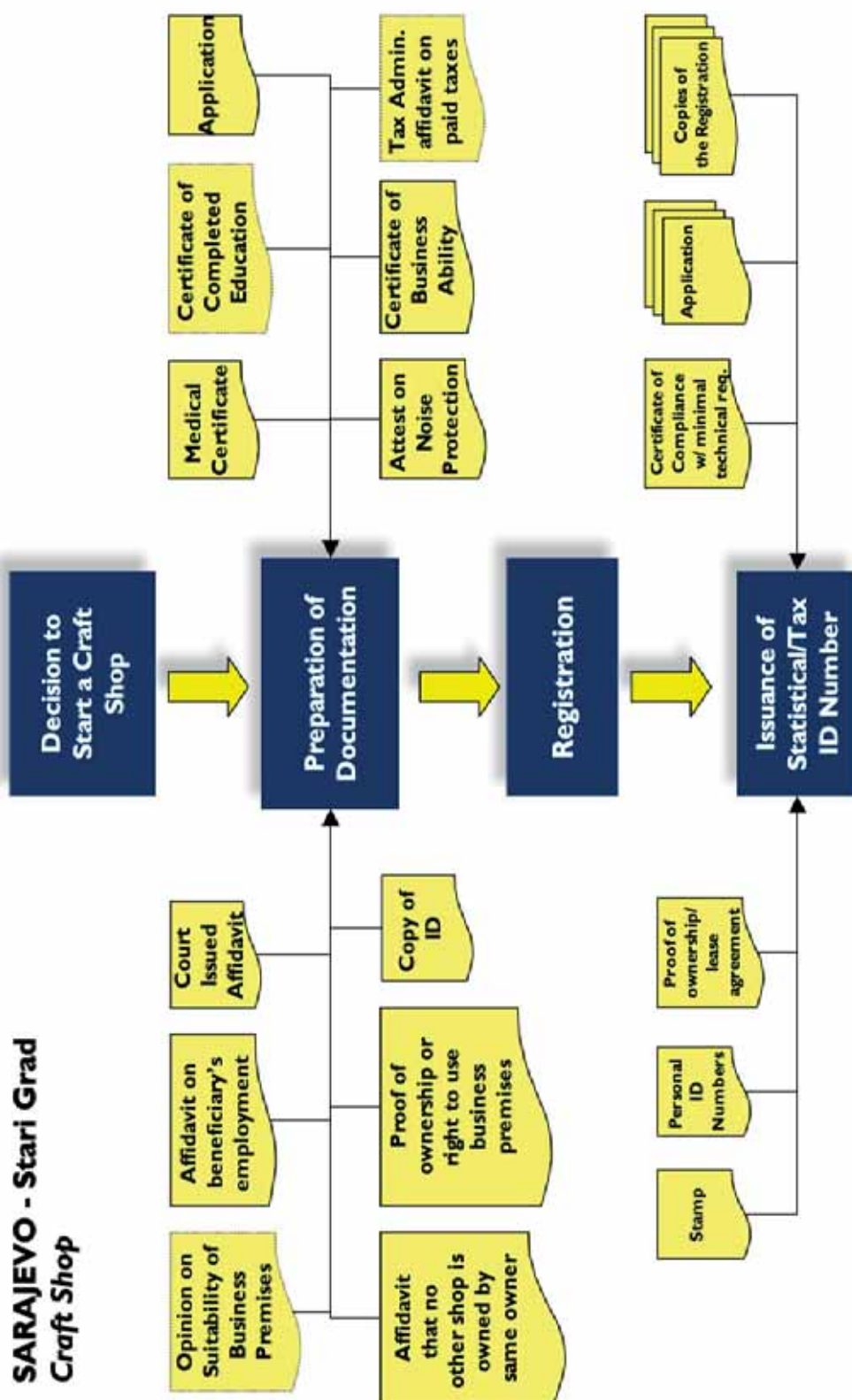
Figure 37

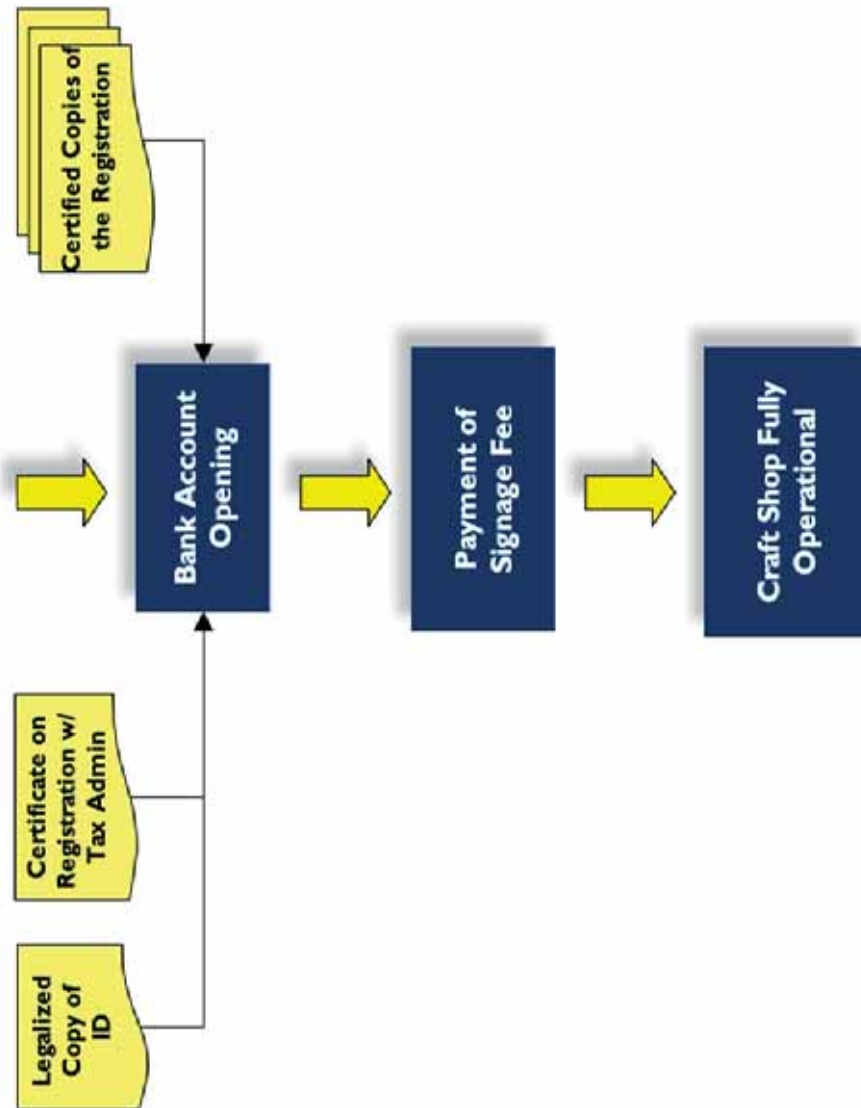
The following table presents documents that are required repeatedly:

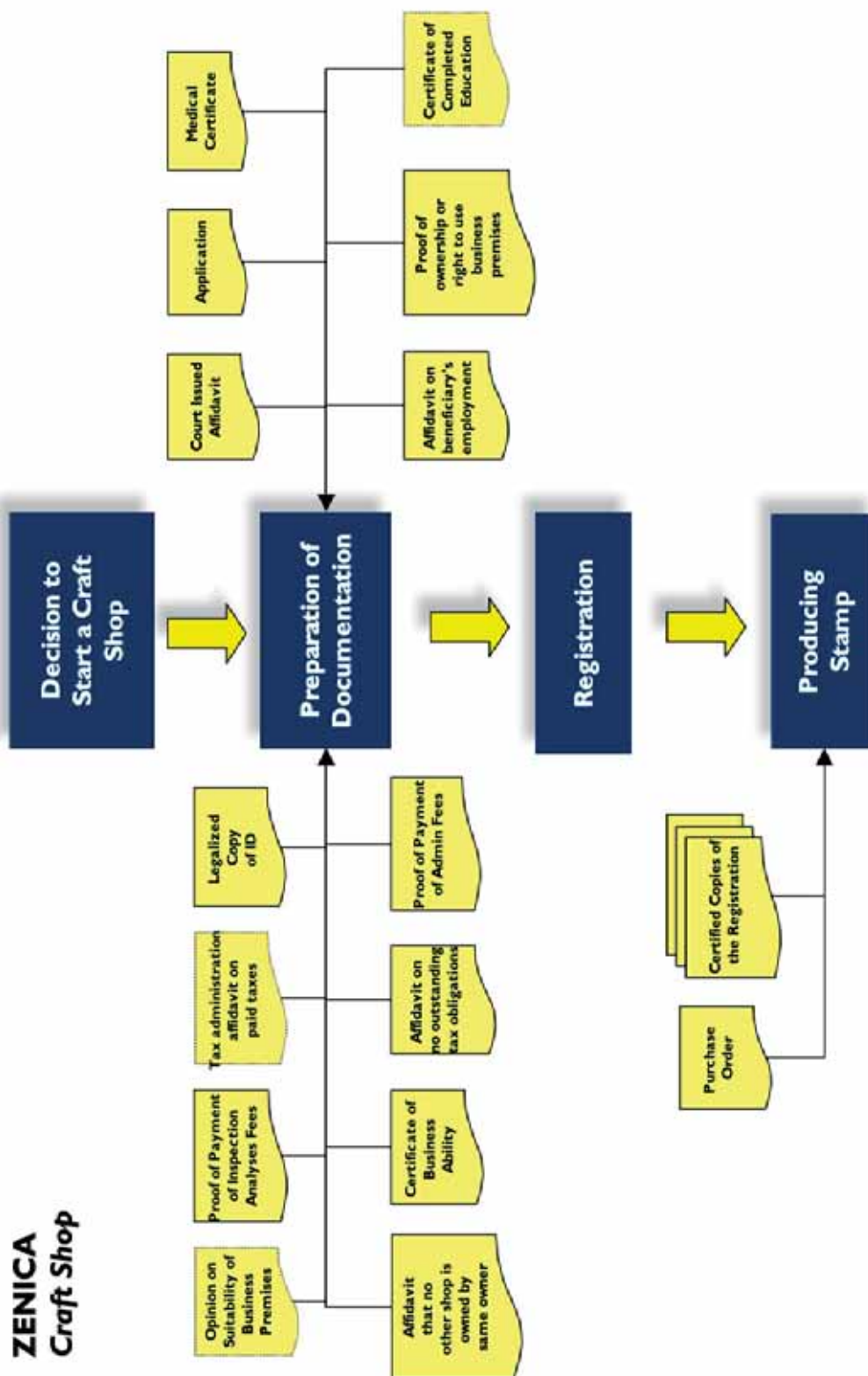
DOCUMENT	# OF TIMES		PRODUCED BY
	Required	Legalized	
Craft Shop Registration	3	2	City Administration
Statistic Number Certificate	2		
Craftsman's ID card	3	2	

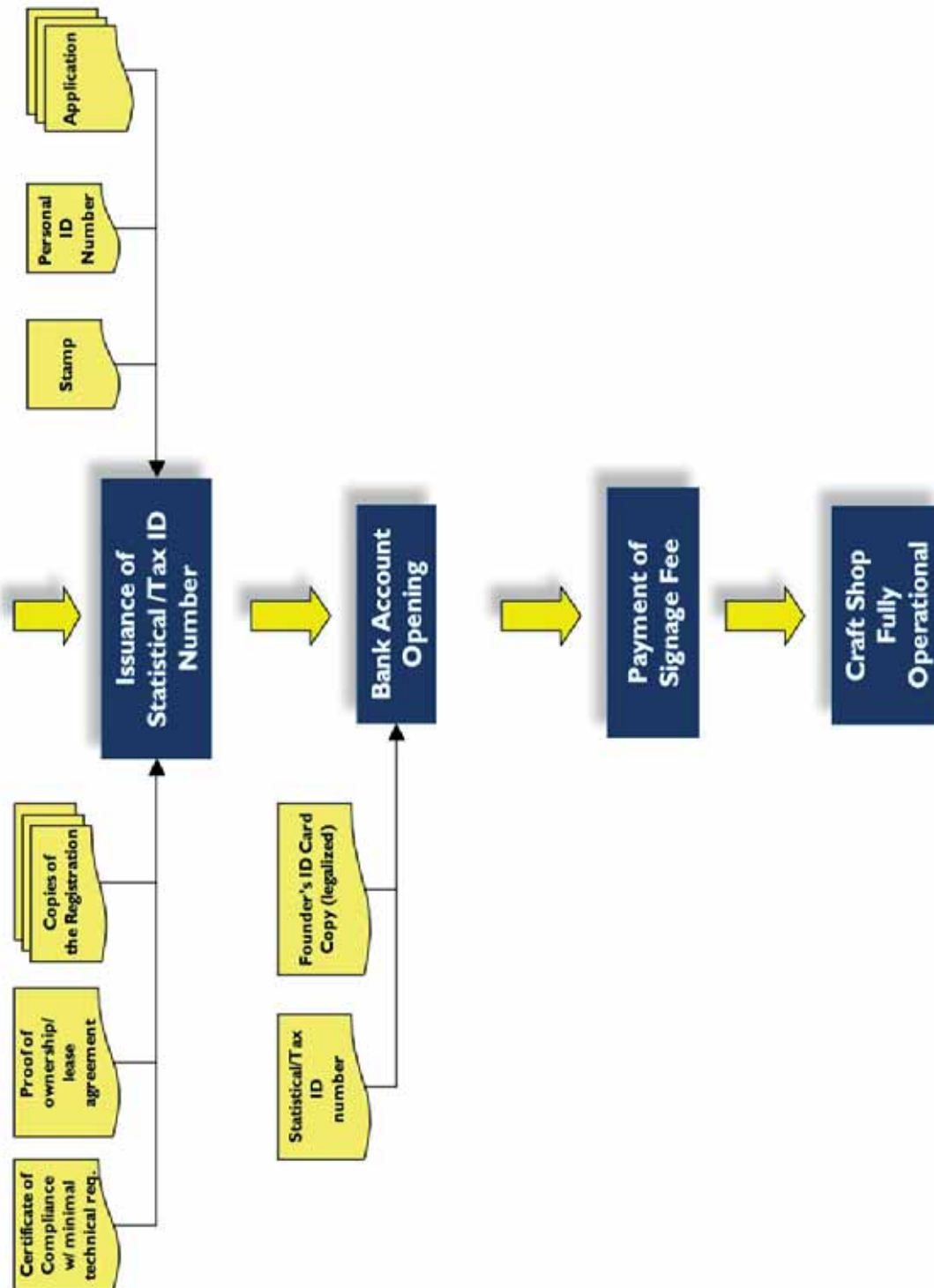
Figure 38

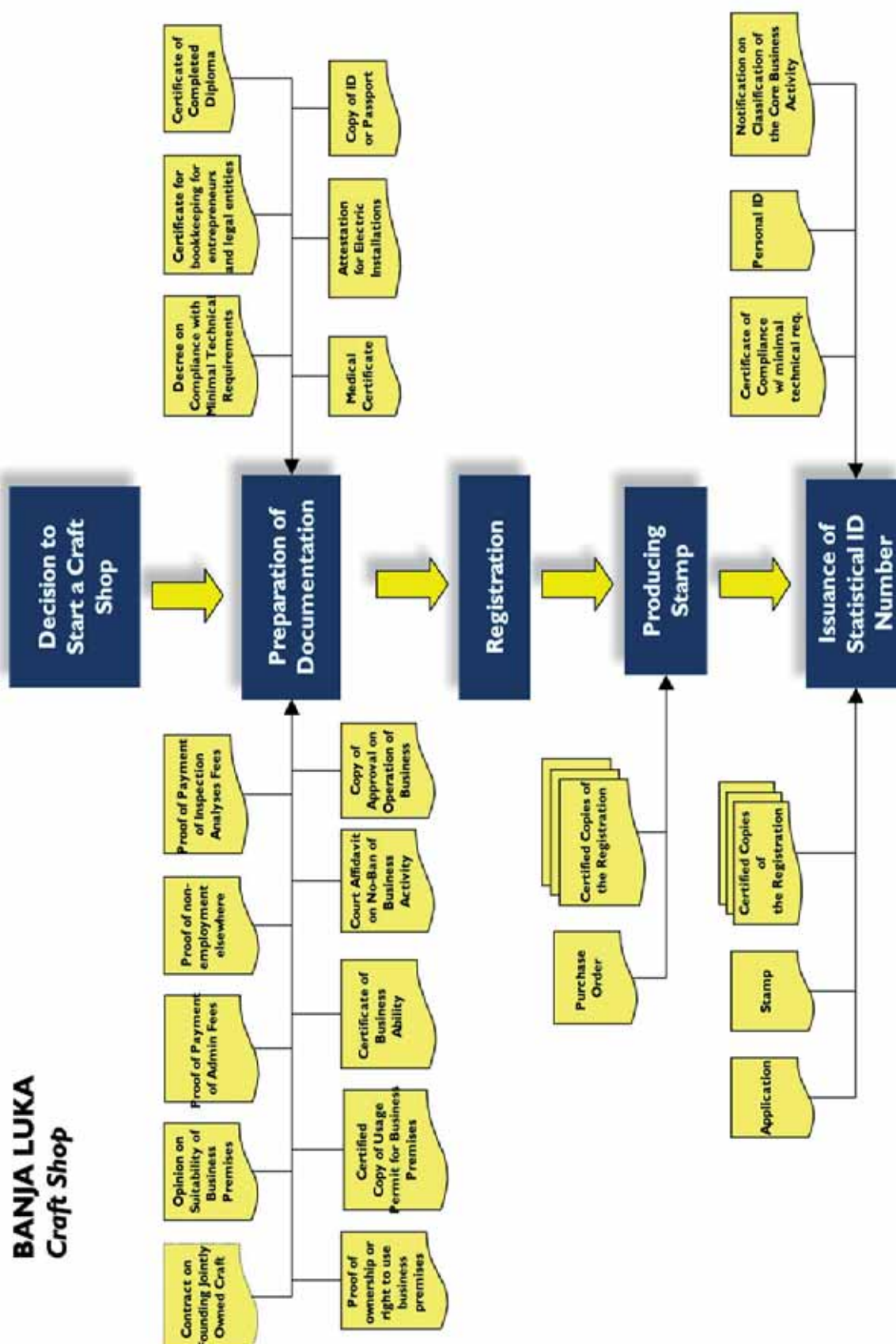
This situation decreases the number of unique documents required to **19**.

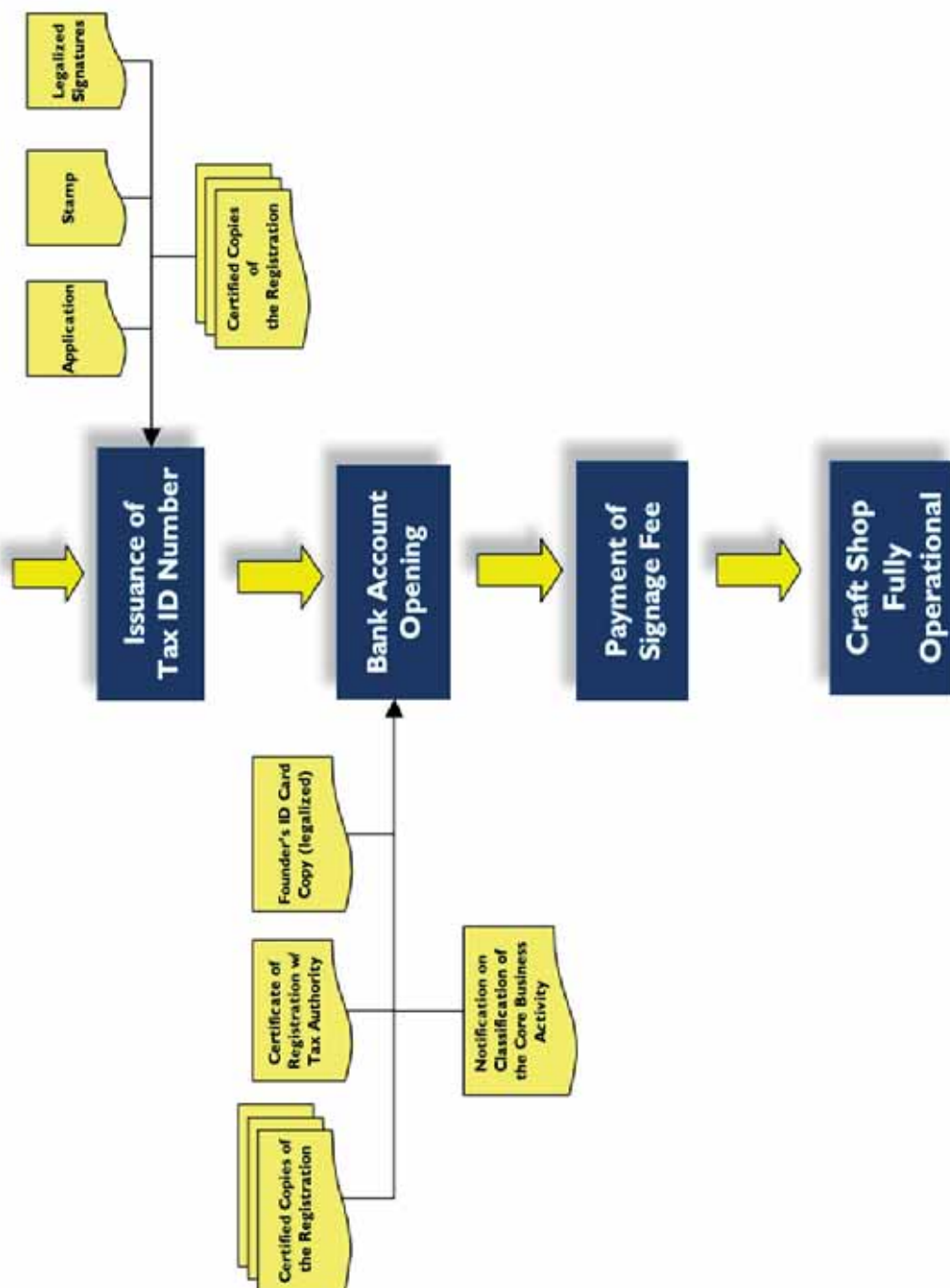












CONCLUSIONS

Craft-shop start-up suffers from nearly the same deficiencies as the company start-up process:

- It is a convoluted process with a number of administrative procedures and steps with changeable attributes determined by policy that each municipal authority applies to the craftsman at some point of time during the process.
- Municipal authorities are rather passive in the process which is almost entirely driven by a would-be craftsman/entrepreneur who liaises between different state authorities in order to open a craft shop or an independent business activity.
- The craftsman/entrepreneur is asked to repeatedly submit to one level of authority the documents that are produced by some other level of authority or department within the same administrative body.
- The purpose and validity of some of the documents is highly dubious, i.e. the certificate of business ability issued by the local Center for Social Welfare is nothing more than a statement of the fact that the person in question is not on the list of persons with special needs that the local Center maintains and disburses social care compensation to. Still, it is the pre-requisite for registration of a craft-shop in all three municipalities.
- As with the company registration, the administrative procedure of starting a craft-shop is also used for tax enforcement purposes in the Federation.
- Verification of compliance with minimum technical requirements performed in the post-registration stage includes the verification of the legality of occupancy of premises and legality of the building in which a craft shop is located.
- The legal system applies different rules for different parts of the country, but within the same entity. Differences are mostly based on the geographical location and type of business activity.
- The complexity of the BiH legal system creates a legal maze and unpredictability in time consumed and costs encumbered.

HIGHLIGHTS FROM QUESTIONNAIRES, INTERVIEWS AND DOCUMENTS COLLECTED

Sarajevo

Apart from Proof on suitability of business premises issued by Ministry of Economy Cantonal Inspection Commission, in Sarajevo Canton, a certificate on meeting for noise-proof requirements by the Institute for Architecture, Urbanism and Spatial Planning Sarajevo is also required for the businesses situated in the residential buildings. The cost of the Commission issuing the Attestation is rather high: 160 KM. In case a special device called 'noise limiter' is deemed necessary, this raises the cost for approx. 80 KM (average price of the device).

Zenica

The Experts Team involved in verification of compliance with minimum technical requirements is team made up of representatives from the Municipal Department of Economy, unlike in Sarajevo where the Experts team is made up of the representatives of Cantonal Ministry of Economy.

As in Sarajevo, the failure to meet the minimum technical requirements has historically caused the applications to pile up on the desks of the officials of Zenica Department of Economy. Upon his appointment in 2003, the current Head of the Zenica Department of Economy decided to clear the backlog by bypassing the requirement for obtaining use permits for already existing premises. Instead, he engaged the Public Institute for Spatial Planning to do on-site inspection of the construction in question and issue the certificate of good standing order. The Public Institute charges the craft owner 150 KM fee for these services. This way the clients are saved from the prolonged and often impossible mission of trying to obtain use and construction permits for old buildings.

Banja Luka

The Banja Luka City Administration maintains a useful web-site where all relevant information and forms can be obtained. Forms are available both in MS Word and pdf format. However, it is not possible to submit an application on-line.

Until September 2005 Banja Luka City Administration had charged a flat rate for signage: KM 200 for legal entities and KM 100 for craft shops. In September 2005, the Administration introduced a new fee schedule ranging from KM 400 to KM 3000. The highest fee is charged for posting a sign for night bars and discothèques in public.

V Urban, Construction and Usage Permits

Introduction and Background

This report is based on completed questionnaires received from municipalities in Sarajevo and Zenica within FBiH, plus the city (and municipality) of Banja Luka within Republika Srpska. Banja Luka completed a similar survey in April 2005 through a GAP initiative, the results of which are incorporated here. Additional surveys were distributed to seven other municipalities, and their results can be obtained separately from this report.). Based on responses from both government and private sector sources, it is obvious that the requirements for obtaining the necessary permits involve considerable- indeed excessive - time and money. The lengthy process currently used to legalize new construction projects is influenced by several factors:

- Complicated forms of land ownership characterize Bosnian land tenure today. Thousands of parcels are recorded under absentee ownership. Especially troublesome is the on-going status of Government ownership in properties which have not been fully “de-nationalized,” a condition that is not being remedied by the government to resolve these residual state ownership interests;
- There is an absence or obsolescence of adequate local planning policies (especially general/ urban/regulatory plans) for the areas where construction is proposed;
- Opinion exists amongst relevant officials - as to how new investment projects should be managed within administering jurisdictions, such as:
 - Personnel within public utility companies and communal organizations should promptly analyze the impact of new construction projects and equitably negotiate the terms of new access to utility systems;
 - Personnel within higher levels of government (including Federation and Cantonal officials) should analyze the impact new construction could have on environmental and transportation issues, which is sometimes stymied by the absence of clear-cut policies;
- The dispersion of relevant offices and agencies hampers an effort to make reports or approvals;
- Repeated requirements for “original” or copies of relevant documents are burdensome to applicant;
- Inspection procedures of on-going construction activity are inconsistent or nonexistent;
- Standardized codes used to affirm acceptable construction techniques, materials, and structural requirements are out of date.
- In addition to the above-listed factors, the costs incurred during the construction permitting process are not insubstantial either.

Current Situation: Regulation of Construction within the municipalities

Structurally, there are three main permits required to legalize new construction projects. These are designated sequentially as “urban,” “construction,” and “use” (or occupancy)

permits. Ordinary non-commercial permits within the Federation and RS are issued by Municipal Departments for Urban Development (or Spatial Planning, but hereafter generally referred to as the “Urban Development” Department). Within the Federation, Cantonal Ministries issue permits for larger (5000m² and greater), more complex facilities which straddle the boundary between two municipalities, and those of “special interest” to the canton. (However a concise definition of what constitutes “special interest” is nebulous and undefined.) Access to a main road, environmental reviews, and properties within forested lands require separate permits that are issued by cantonal and/or entity agencies before they are incorporated into the local permitting process. In both Entities, projects that are “significant” for the Entity as a whole, such as those with a capacity to influence environmental quality or extend beyond the territorial boundaries of one or more local jurisdictions, will require entity ministerial approval. With these conditions noted, the following graphic description fits most “conventional” construction situations.

Pre-Application Phase

Prompt handling of the required Urban Permit procedures requires diligent advance work by prospective investors. Success in collecting the necessary documents and assembling these in a coherent “package” contributes to a better review environment by local officials and speed up the permitting approval process. At least three documents have to be attached to any request for Urban Permits:

- Conceptual design, which is prepared by the construction project applicant or his consultant experts;
- Page excerpt from cadastre plan;
- Deed book excerpt.

Some projects also require Environmental and Road Connection “clearance” before local governments will accept the initial application for an urban permit.

The time and expense meted out for conceptual design preparation depends on the construction project type, the skills of the consulting design company, and the clarity of regulatory rules governing land development within the targeted construction area. As an example of the last factor, the condition of “regulatory plans” to guide land use development will greatly influence the municipality’s analysis of a concept plan. If such a plan exists for an area, it is of incalculable value in avoiding misdirected project proposals and community controversy. In any event, the time required to prepare conceptual design plans will vary, and may take months. This activity is beyond the scope of administrative control, and will not be discussed in this paper.

CONSTRUCTION PERMITTING (Pre-Application Phase Activities)

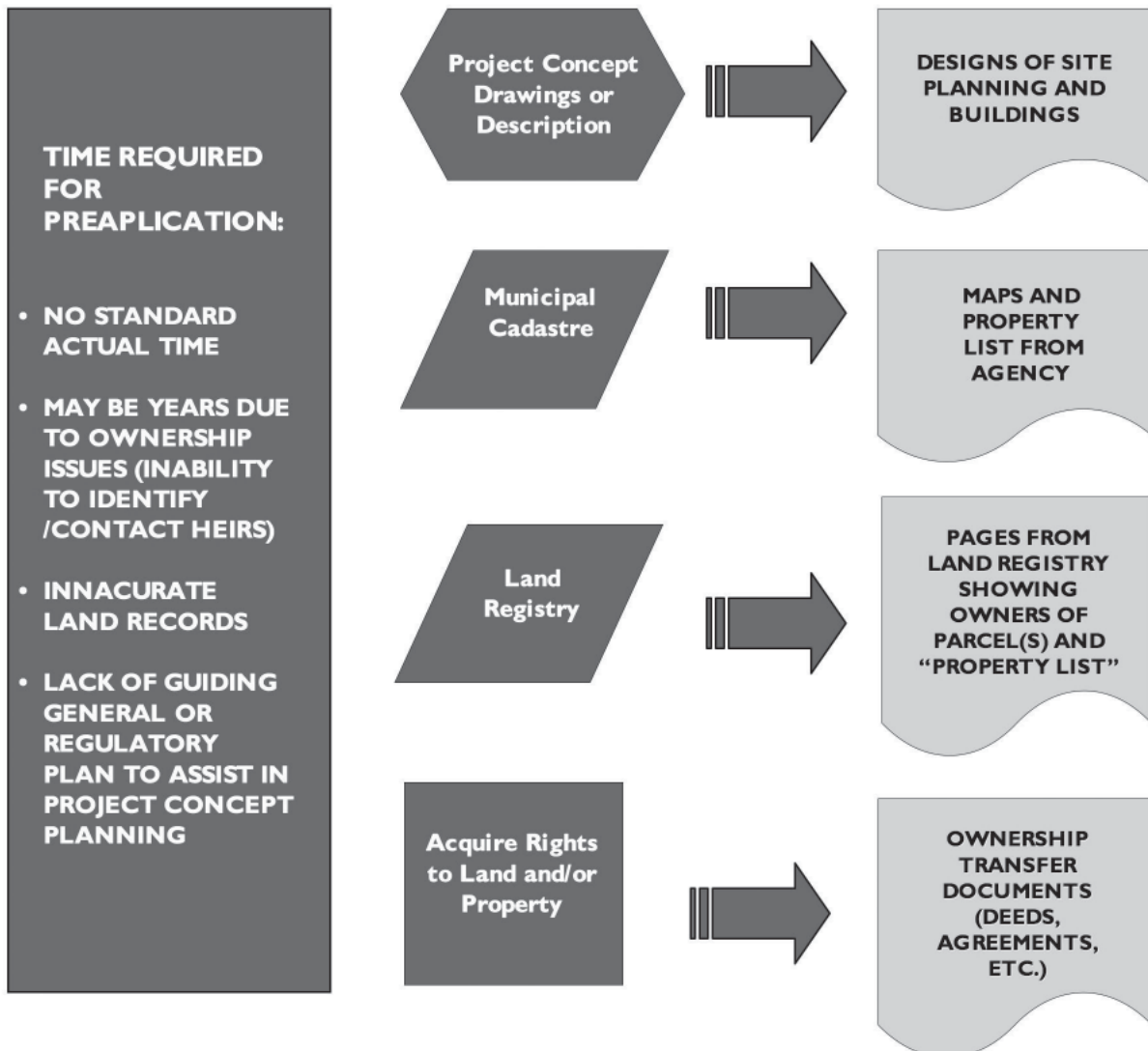


Figure 39

Time and expense for the second two documents might require up to 5 or more days (the average is one or two) with costs between 15-20 KM. A relatively short period is realistic in cases where the local cadastre library is accurate or where a potential construction site is located without ownership problems. The time required for collection of these will be longer:

- If land records have been destroyed and/or
- If there are ownership disputes, and/or
- If the offices housing the Land Registry and the “Municipal Cadastre” are not present close to the administering local government

Urban Permit

In addition to filling out the application formalities, there are six key requirements in the Urban Permit process:

- The ownership of the subject property must be legally established by the applicant. This means that the subject property must either be titled to the applicant, or “allocated” by the state (via the local municipality) to the applicant for the purpose of constructing a building project. If land for the project has been “allocated,” that allocation process must be completed before the Urban Permit can be applied for.

Note: Though the property assemblage process necessary to undertake economical construction projects is inseparable from the construction permitting process, it is an issue that is being addressed through the resources of other programs outside SPIRA. Therefore, “mapping” of land allocation processes are not thoroughly analyzed in this paper.

- A technical planning analysis must be prepared. The size, land use, height, street and pedestrian access, parking standards, and general character of the proposed building must be detailed in this analysis. An assessment of the proposed project must be made against the guidelines of adopted general or regulatory plans for the area.
- “Urban technical conditions” must be prepared. This item requires a site and planning analysis by the municipal staff, supported by a site visit by a committee appointed by the local government; an excerpt from the relevant regulatory plan (if any); and a recital of the “consents,” “endorsements,” approvals, and permits (see following);
- Obtaining permits from the Spatial Planning Ministry for Environmental requirements and the Road Directorate for permission to access intercity highways and roads;
- Obtain “general consents” or “endorsements” by public utility companies and communal organizations;
- Obtaining approvals for work safety (by a specialized institute) and fire protection standards by the Ministry for Internal Affairs.

CONSTRUCTION PERMITTING

Urban (Location) Permit Phase

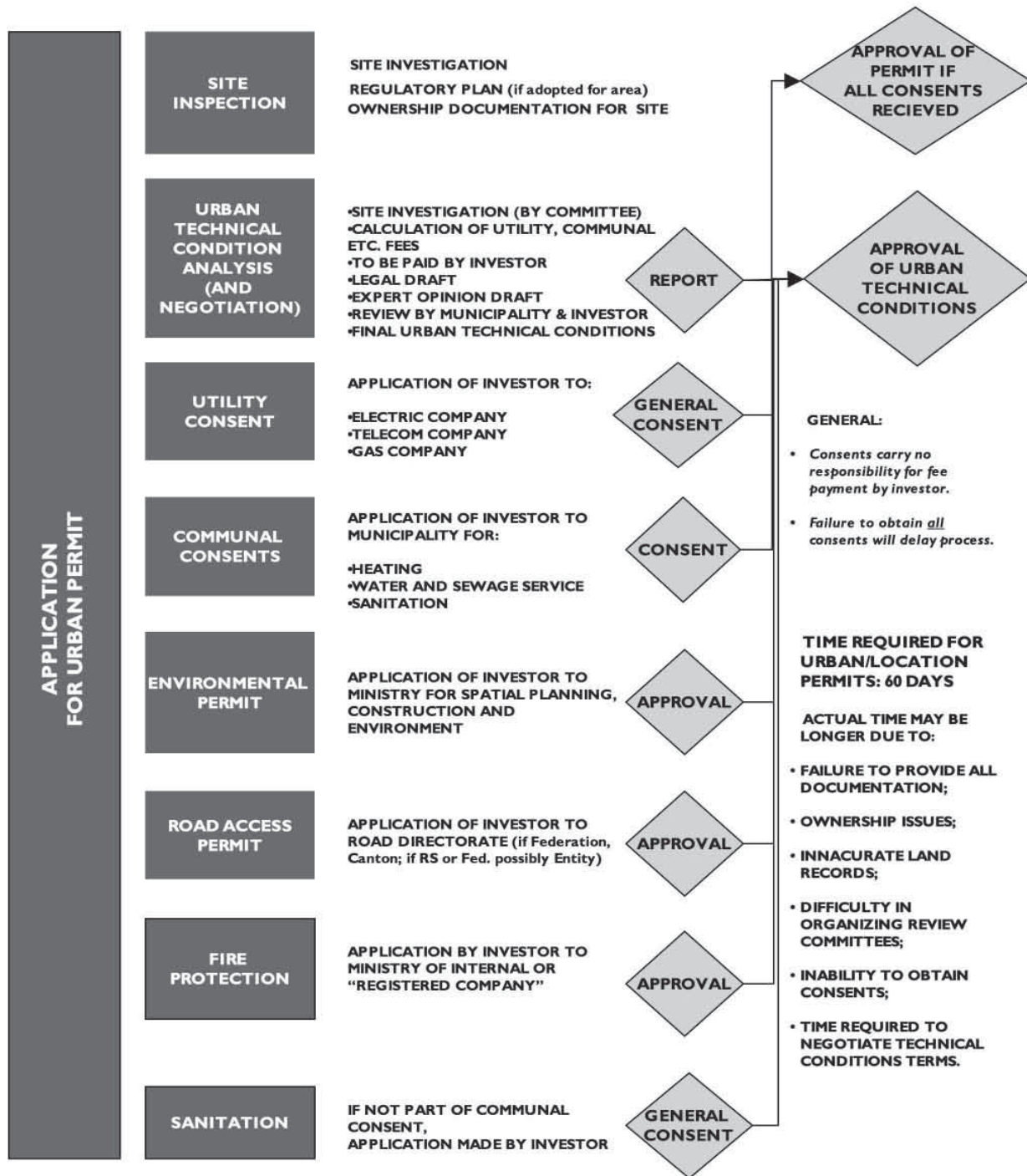


Figure 40

Satisfying the ownership requirements requires documents obtained from the Land Registry and the cadastral office. Excerpts from the Land Registry include the relevant ownership extract (including improvements, in Land Registry, Part A), records of transfers (Part B), and mortgages & encumbrances (Part C). If the proposed project is to be located on land “allocated” by the local government, a copy of this specific legalization must also accompany the application. Ownership documents are reviewed by the municipal staff, usually within the urban development department. However, municipal staff ownership reviews will also take place in the Construction Permitting phase of this process.

To draft the **technical conditions**, a municipal department (usually called the Urban Development Dept., but also referred to as the “Spatial Planning” or other designations) forms a “technical committee” that inspects the potential site, provides an expert opinion of project legality (especially important and complicated in cases where a regulation plan does not exist for the area), and identifies the necessary construction actions to properly service the construction site. Normally, in the RS this technical committee consists of hired contractors to perform the analyses and draft the initial report, but in Sarajevo and Zenica, contractors only analyze and do not draft the expert opinion. If the department decides that a committee should be formed for these purposes, and/or if there is no regulation plan in effect for the neighborhood in which the property lies, the process will take more time. Wherever an updated regulation plan exists for the subject area, urban technical conditions are controlled by the plan. All existing regulation plans are filed either with the Cantonal Institutes for Planning in the Federation or the Institute for Urbanism in the RS, and their experts are the ones most often called upon to perform required analyses, and in the RS, draft Technical Conditions. Wherever a regulation plan is unavailable, then the Institute or other contractor provides its expert opinion on project requirements. For rural areas, the municipal department often uses its own staff to prepare the report.

Concurrently, the investor must obtain “**General** (also called “principal agreement on selected location”) **consents**” from:

- Utility companies (electricity, usually Elektroprivreda/Elektrodistribucija in the Federation, heating and telecommunication;
- Communal services - the water and sewer company and the trash collection (sanitary) organization.

General consents require:

- an engineering plan to illustrate how the construction project will be connected to the existing system infrastructure for each separate utility;
- a plan for any new installation that must be constructed at investors’ expense;
- a cost estimate for the fees that must be paid to each respective utility or communal service.

Determining the extent and nature of the general consents requires that the investor meet individually - usually more than once - with personnel from each affected utility or communal agency. Each requirement of the general consent must be negotiated, and the consent is not obtained until there is assent (if not satisfaction) on both sides.

Furthermore, the construction project sponsor must obtain: a fire protection certificate (from a registered company/institute or the Ministry of Internal Affairs); and a work safety endorsement.

In some cases, and usually in every commercial or industrial project, an environmental permit, road access approval and agricultural land usage permit will also be necessary. Each of these requires separate cantonal ministry and possibly entity-level approval in the Federation (in the RS, they might require entity-level approval). Unfortunately, except for minimum construction project size and entity-level approvals of entity-controlled road access there is little consensus on what constitutes a “standard” by which a project of “special significance” project must pass from municipal to cantonal or higher regulation.

As described, each individual consenting or permitting agency is dealt with separately by the investor, and during this entire “consent” process municipal employees remain uninvolved. They neither help the investor nor provide advice on how to deal with the individual utility companies. Each separate consent is entered into the file maintained by the urban development department as part of the support for the Urban Permit's ultimate approval.

Most responding municipalities estimated that the time for issuing ordinary urban permits requires between 30 and 45 days. This time span assumed that no permit from the cantonal and/or entity ministries would be required. However, private investor interviews asserted that the actual time required is closer to 60 days, probably because their larger, more complex projects involved additional reviews, consents, analyses and negotiations. Administrative fee payment for urban permit costs between 30 and 150 KM, depending on facility type and size.

The results of an approved Urban Permit are the following:

- A specific parcel has been demarked and identified as a construction site. (Realizing only one single parcel from such a long process exposes an inefficiency in the entire process);
- The legality of ownership of the land beneath the new construction is established. However, it is established only for the effective date of the Permit, and not “embedded” into subsequent process steps;
- The construction project's general character, land use, and physical location within the site are fixed;
- The party (investor) who is legally authorized to file a construction permit is identified;
- The amounts of money to be paid to the municipality, utility companies, and communal agencies are fixed through negotiation;
- The conditions for workplace safety and fire protection are listed.

After the Urban Permit

The time between the issuance of an Urban Permit and the investor's application for a construction permit is critical to the construction process in Bosnia and Herzegovina. First, this is the period during which the investor **completes working drawings**, specifications, and itemization of materials. For small, residential projects plan preparation may take a few weeks, but for large and complex commercial projects, this step may take

months, and if the original concept plans are affected as a result of Urban Permit reviews, the investor's working plan preparation will be stretched in time.

The second critical step requires entity agency involvement. The Law on Construction Land requires grant of a **"Priority Right to Construct"** by the RS Cadastre and Ownership Office to the applicant-investor. In Banja Luka (Federation respondents did not highlight this requirement), the grant of "Priority Right" approval might take two months, but even worse time consequences occur if the property has not been fully "de-nationalized," which is the case for hundreds, if not thousands of individual parcels throughout Bosnia. The complicating effect of the RS law on de-nationalization laws "excepted" certain land; it applies wherever land for a proposed project lies within territory whose construction land nationalized before the 1970s. This legal exception complicates the ownership status of affected land because it means that the state, usually local municipal governments, still "own" extensive properties. To fully release such land, municipal permission must be granted to authorize the Cadastre and Ownership Office to grant a "Priority Right to Construct" to the applicant-investor. (This complicating situation arises where multiple ownerships require the "assemblage" of individual parcels into one whole, and one or more of the individual ownerships involve nationalized land the investor may obtain consent from the municipality only after the local government assembly has favorably voted on the request.) This division of responsibility between two agencies in this circumstance means that the required action is not smoothly processed, and the final consent might take a year's time, according to investors who have experienced this requirement.

There is a third activity that many investors initiate during the time before applying for a Construction Permit. This involves the **satisfaction of utility company "General Consent"** terms that were stipulated during the Urban Permit phase. Each consenting utility and communal service must individually be paid a fee before it issues a written "Final Consent." In view of the time required to visit the offices, make the payments, obtain the receipts to document the payment, and obtain the consent letters, some investors decide to start this process before formally applying for the Construction Permit itself.

Though this interregnum was not identified in the questionnaire responses from local government officials, it is an extremely critical period in the development permitting process. It may require several months to complete, especially if the proposed building is large and involves further permissions that are required under the Laws on Construction Land.

Construction Permit

On receiving the approved urban permit, the investor must prepare working construction plans that incorporate requirements from the urban technical conditions. If the investor is fortunate and well-informed, he will have begun working plan preparation while the urban permit is being processed but this involves risk. If there are complications, the project concept might undergo significant modifications, prolonging the time for preparation of final working plans. Cost and time for the working design preparation cannot be estimated with accuracy because it depends on project complexity.

The documents required to accompany the application are:

- two or three copies of the project design plans,

- a copy of cadastre plan (which was required for the urban permit),
- a deed book excerpt (also required for the urban permit), and
- a copy of urban permit itself, usually complete with copies of granted “general consents” and any permits that were required.

The application and supporting documents are again submitted to the same municipal department that processed the urban permit. Construction permit review includes:

- Reconfirmation of Ownership legality. This may be necessary to provide for the changes that may have taken place in the one year between UP issuance and CP start. A time-consuming aspect of this reconfirmation is the requirement for “owners consent.” Owners of the affected/adjoining property must be notified of the project working plans. Should these owners object to the proposed project, an “appeal” of the project’s municipal approval is forwarded to the entity Ministry of Spatial Planning. Deciding on these appeals may be slow; for instance, the RS Ministry’s current backlog of such appeals extends back to the year 2002;
- Most aspects of the final working drawings, especially to affirm that these conform to technical condition requirements in the Urban Permit;
- Review of “Final” consents from utility companies. At this time, “Final Consents,” are written by the utilities and communal agencies documenting that the investor has paid all the fees as well as committed to any system infrastructure enhancements that were embodied in the original technical conditions. Thus, although the requirements for construction permits appear to duplicate those for the urban permit, they are substantially different because of these fee-paying obligations.

Local government questionnaire respondents stated that a period for obtaining a construction permit ranged between 30 and 45 days, assuming no design faults and a timely provision of proper documentation by the investor. As in the Urban Permit case, private investors estimated the required time to be 60 days, again assuming that there were no complications arising from design flaws, utility complications, or residual ownership issues. And, for more complex structures this period is longer than 6 months. (However, investors and local officials cautioned that cantonal or entity road access consents might add months or even years to this process.)

A major factor in construction permitting is the requirement to pay numerous costs, among them taxes, rents, and fees. Taxes for construction land usage are high in urban areas. For example, in Sarajevo Canton, if a facility is located in the City Center, one has to pay around 53 KM per m² as a tax (rent) for usage the land. One investor stated that around 25% of the final costs per m² are spent for taxes (including electrical energy supply tax), infrastructure improvement fees, exclusive of expenses for preparation of basic and main designs and obtaining permits).

The results of an approved Construction Permit are the following:

- The construction project’s land use, site layout, size, height, within the site are approved;
- The ownership of the land beneath the new construction is affirmed;
- The party (investor) who is legally authorized to undertake construction on the site is identified;
- The payment of money to be paid to the municipality, utility companies, and communal agencies has been made and is evidenced by documentation;

- The conditions for workplace safety and fire protection are detailed;
- The permitted time of construction start is fixed, and an expiration period is usually established.

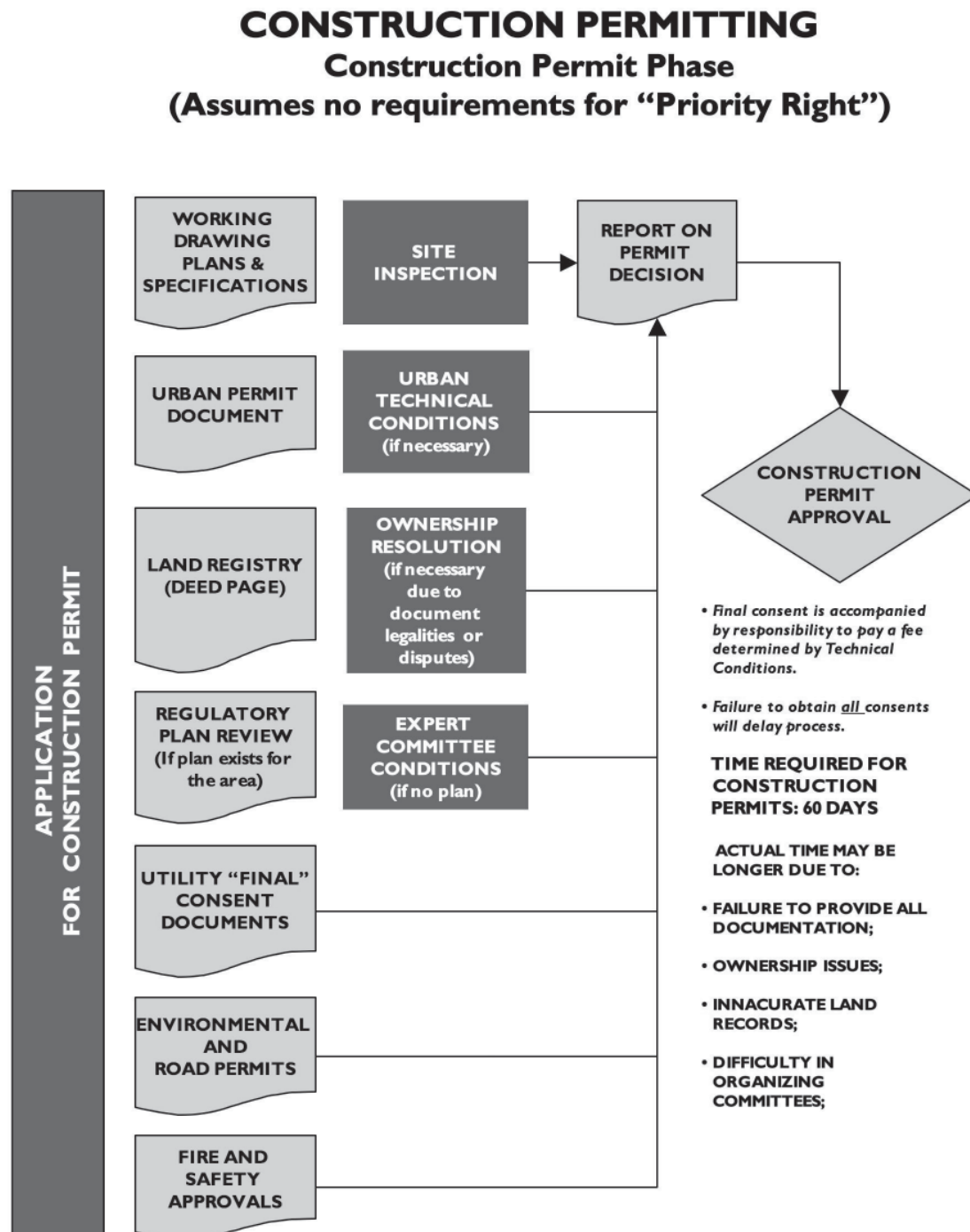


Figure 41

Occupancy or Usage Permit

The construction permit specifically authorizes the investor or his building contractor to start constructing the building. However, if the site is already occupied by an existing building, yet another process is required before such physical encumbrances can be demolished. In such cases, the investor must obtain a survey to establish a new building line from that which was used by obsolete structures on the site. Thereafter, site preparation, utility installations, structural construction, and internal finishing can be undertaken. Once construction is completed (or nearly so), the investor submits a request for “technical acceptance” to the municipality.

Upon receiving the request, the urban development department usually forms a “Committee for Technical Acceptance” to:

- Review the Working Plans; and
- Inspect the completed buildings and property improvements to assure their satisfaction of the approved plans.

The municipality’s “Committee for Technical Acceptance” is usually comprised of hired outside expert contractors (Banja Luka has a list of 8 candidate contractor firms.) The currently valid Law on Construction requires that the investor prepare “as-built” drawings, certifications on used materials, a site log and a construction book. If there are no adverse remarks in the Report on Technical Acceptance, the usage permit is issued by the responsible government.

The time required to complete the Occupancy Permit phase is most difficult to quantify. Despite the Construction Law’s requirement for 8 days to pass from time of inspection request until its completion, investors reported it is not uncommon for 60 days to be required for their larger, more complicated projects. This is probably due to the likelihood that such projects are more likely to require recruiting and contracting outside expert firms, and the probability that large projects have experienced modifications, changes, or minor adjustments from their original working designs. These design departures are not observed until the end of the construction process because the process doesn’t allow for on-going inspections during construction. Consequently, many structural, electrical, and mechanical construction aspects are invisible behind finished building walls.

The results of an approved Use/Occupancy Permit in Sarajevo, Zenica, and Banja Luka are the following:

- Certification of the construction project’s completion in accordance with previously-approved plans;
- Affirmation of the ownership of the building improvements and land beneath the new construction;
- Satisfaction of conditions for workplace safety and fire protection;
- Grants of rights to the building users and occupants to connect to utility services; and
- The right to use and occupy the completed building and grounds are granted.

CONSTRUCTION PERMITTING

Use/Occupancy Permit

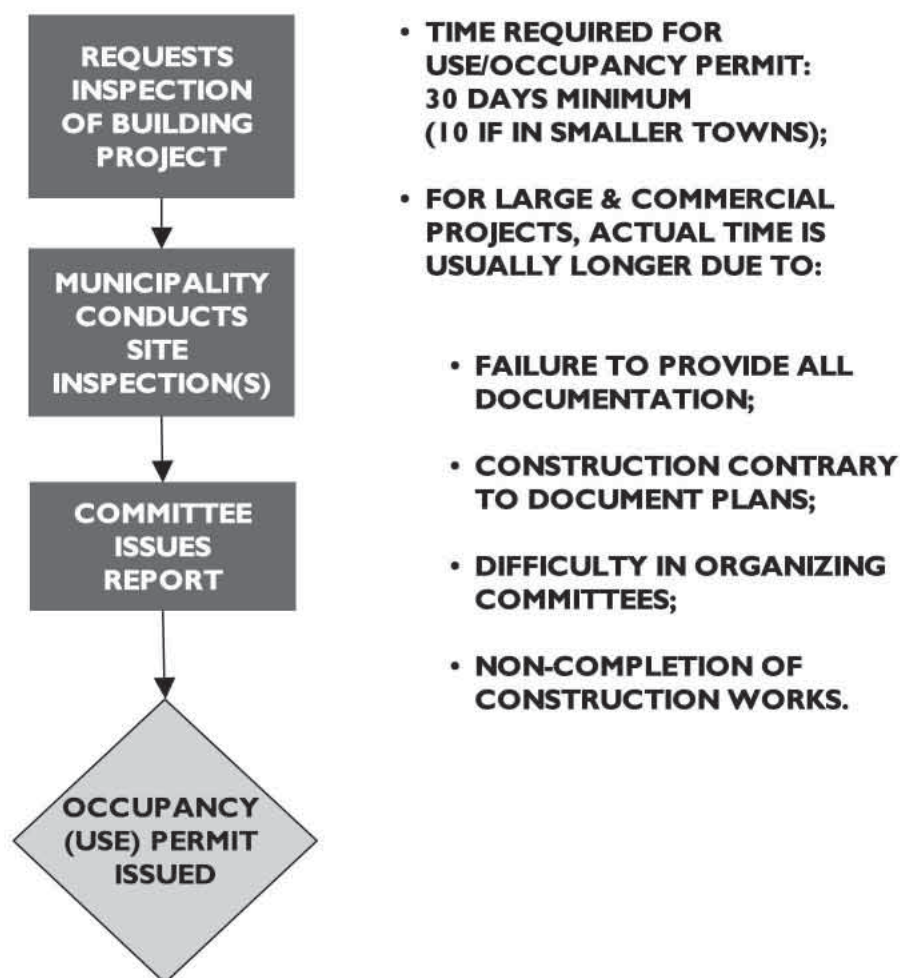


Figure 42

Sarajevo, Zenica and Banja Luka – time and costs

Provided there are no property ownership issues, the local regulation plan is updated, if no permits from Cantonal authorities are required, and no faults are found as a result of the final inspection, the below tables presents reasonable time estimates necessary to obtain the permits. These periods do not include time necessary for basic (conceptual) and main designs preparation, municipal land allocation approvals, “Priority Right to Construct” approvals by entity-level offices, appeals adjacent/affected owner consents, or entity or cantonal Road Directorate approvals. One or more of these could easily lengthen the process by a year or more.

Time (days) – ideal situation

Phases	Sarajevo	Zenica	Banja Luka
PRE-APPLICATION	up to 5	up to 5	10
URBAN PERMIT	30	30	60
CONSTRUCTION PERMIT	30-60	30-60	40-50
OCCUPANCY PERMIT	15-30	20-25	30

Figure 43

The above table is based on information received from the reviewed questionnaires. However, a limited number of interviews with local investors and small number of reviewed files in the municipalities have clearly presented that in reality, the process takes much more time.

For example, for two requests for construction of new private houses in Stari grad Municipality, the process for obtaining urban permit took more than one year, exactly 13 and 14 months. The main reasons are lack of regulatory plans and long lasting procedures of Cantonal Institute for Spatial Planning for issuing urban-technical conditions. This problem appears to stem from a lack of awareness by potential investors, in addition to a complete absence of administrative support for applicants, so they lose time and energy visiting the same offices numerous times. In both cases, the construction permits were issued within 60 days.

The other case is a story of a well-known private investor in Sarajevo who wanted to build a commercial center in Blazuj region. He resolved property issues, prepared a basic design and requested the urban permit in Winter 2004. However, he was told that a regulatory plan would have to be created before his project’s compliance with that plan could be considered. Based on the situation, he agreed to fund the plan, but the whole process until the adoption of the plan lasted exactly one year. After that, the urban permit was issued in two months, and the investor is currently in the phase of main design preparation. He wants to complete his plan, but is frustrated by the process.

There is one positive case. Construction of a new distribution center in Vogosca was supported by the municipality; a regulatory plan for its industrial zone was ready; property issues were resolved prior to requesting any permits; and an experienced

designer was engaged. The period between requesting and obtaining the urban, construction and occupancy permits was 16 months, included designing and construction periods. The urban permit was issued within 30 days, construction 60 days, while occupancy was ready in 15 days. The only permit, which requested more time, was the environmental consent from the Federal Ministry. To shorten the long procedure, the investor funded by himself a study on environmental impacts and received this approval in 30 days.

The remapping process has disclosed that construction procedures are highly sensitive to circumstances that might be unique to individual sites. Taking such circumstances into account, a new, more realistic time frame can be summarized as follows:

Phases	Time (days)
PRE-APPLICATION	5-300 (lengthened by need to address property issues, rework concept schemes, added time for re-parcelization of construction land)
URBAN PERMIT	30-390 (lengthened if there is no regulatory plan, or environmental permits and road access consents are required, and/or utility installations must be negotiated and designed, and/or the project is of "higher significance")
CONSTRUCTION PERMIT (Not including Construction of building time)	30-120 (lengthened if working plans must be reworked; and/or if safety, fire, environmental, and road conditions must be addressed; and/or ownership consents are protested, and/or if municipal approval is required for "Priority Right to Construct")
OCCUPANCY PERMIT	15-180 (lengthened if construction design departures or faulty work are discovered - a common occurrence if facility is complex)

Figure 44

Estimation of total costs necessary for obtaining permits is different for every facility and depends on its purpose, dimensions and locations. Administrative fees for permits are negligible, but rents and fees to be paid for construction land usage are high and are defined per gross construction area of a building.

Difference in:	Sarajevo	Zenica	Banja Luka
Rents for city construction land (6 zones in all municipalities)	9-53 KM/m ²	8-48 KM/m ² – housing 32-48 KM/m ² – business premises 16 KM/m ² – industrial facilities	7.5 – 45 KM/m ²

Difference in:	Sarajevo	Zenica	Banja Luka
Tax for construction site development	Left to investors to negotiate necessary infrastructure improvement with concerned public companies	32 KM/m ² – housing, 16 KM/m ² – cultural and health premises 13-20 KM/m ² – industrial facilities	146 KM/m ² –urban area 57.60 KM/m ² – rural area (in case some infrastructure service is missing, a total amount is decreased)

Figure 45

The above table clearly presents that local authorities have different approaches regarding construction land development. Sarajevo Canton has left to an investor to negotiate the necessary infrastructure improvements with local public companies, while Banja Luka administration prefers to charge the ready construction site (with all infrastructure services provided) having defined % for unit cost decrease in case all services are not provided. Zenica has the same approach, but this tax is much smaller. Faced with a much worse economical situation than the other two cities, Zenica's local authorities have decided to decrease both rent and tax in case of a new industry/production facility construction.

Characterization of Current Situation - Obstacles Encountered

1. The local government process for obtaining urban and construction permits is quite complicated and lengthy, marked in some cases by repetitive documentation. In addition to duplicating documentation requirements, it omits important aspects of the development process:
 - Inadequate processes to "subdivide" land into usable land parcels; Current practice is to "transform" cadastrally-mapped ownership parcels into "construction" parcels, often on a piecemeal, parcel-by-parcel basis. This practice often requires municipal "allocations" of land to the responsibility (but not ownership) of investors. It means that additional processes must be pursued if the newly-parcelized land is "state-owned" (because "Priority Right to Construct" must be granted) and/or privately-owned (because owners-adjoiners consent must be obtained later);
 - Inadequate supervision during construction. Although current laws on Spatial Planning and Construction provide for regulatory bodies (municipalities, cantons, and entities where necessary) to conduct inspections of on-going construction, this is rarely done. As a consequence, construction "faults" and variances from approved plans are not detected until the "final" inspection that is requested by the investor. This has the effect of prolonging the final Use and Occupancy step, possibly for months, due to requirements for "corrective" construction.
2. To validate legal ownership, many of the same Land Registry and Cadastral documents are required to support both the Urban and Construction Permits; seemingly, it should be possible that the existence of an Urban Permit should be *prima facie* evidence that necessary ownership documentation has been obtained, yet

many offices still require the same documents for each step. Even more daunting are issues that stem from the different kinds of land “ownership” that govern Bosnia’s land tenure system. These include:

- “Illegal occupancy” of many properties by private parties;
 - State ownership of extensive areas of cities that were “nationalized,” but never “expropriated,” meaning that government ownership has not been recorded in the Land Registry, yet continues as a legal status;
 - Absentee ownership of land by heirs or displaces whose names remain listed in the Land Registry and/or cadastral files. Even if the proper ownership is known, contacting the legal owners and/or their heirs is often difficult due to their physical dispersion - often to foreign lands.
3. The canton- and entity-level participation is time-consuming. Lengthy procedures are likely in the case of any decision that requires entity and/or cantonal approvals. For the circumstances where this arises include:
- **Road access consents.** The authority to grant road access rights to a specific property is sometimes unclearly assigned between entity, cantonal, and municipal governments. The process is difficult to administer, especially if environmental, agricultural or road access permits are required from higher governmental levels. SPIRA’s Questionnaire respondents reported that 90 days were required for Road Access approvals, but one jurisdiction said that if the entity were involved road, access approval could take one or more years, especially if there are neither transportation plans nor established procedures on which to base any higher level review;
 - The RS-Construction Land Law required-grant of “**Priority Right to Construct**” on once-nationalized land. This requires action by the entity-level Office of Cadastral & Ownership Affairs, (as well as approval by the Municipal Council);
 - Appeals from adjacent/affected property owner consents. Although the local municipality must process these consents within 60 days, (proposed to be reduced to 15 days in the RS), if interested owner parties “appeal” to the entity Ministry of Spatial Planning might take months or years. (Environmental permits, which are issued by the same ministry, might also involve very time-consuming delays).
4. A less than constructive attitude sometimes exists on the part of administering officials within higher-level government organizations, utility companies, and communal agencies. Municipal assistance or advice to a potential investor is routinely non-existent, causing the investor to make the rounds from one agency or utility company to another to collect consents. Municipal personnel strictly limit their activities to issuing urban-technical conditions and formally granting approvable permits, and rarely share information about other agency locations, telephone numbers, staffers names, or the like. As a result, there is virtually no communication between the local administration and responsible utility companies and communal services agencies.
5. Many, if not most, local jurisdictions operate without adequate local planning policies. Without updated regulatory plans, the rules for property construction will have to be made up *ad hoc* by officials, meaning that the rules for one adjoining

property might be at total odds with its neighbor, or worse, that there will be no treatment at all for certain construction issues.

6. "State-owned" land still complicates construction investment. A form of Government ownership is still recognized for properties which have not been fully "de-nationalized." Articles 17 - 29 of the RS Construction Land Law (and Articles 27 - 38 of the FBiH Law) recognize the vestige of state ownership in urban land and specify requirements for various circumstances that must be addressed before "state" land may be developed. Until the law is changed, state involvement continues even after a building is constructed.
7. The permitting process is also hindered by other factors, including:
 - Physical separation of regulating offices. Investor/builder implementation is often difficult because (especially in the Federation BiH) there is a dispersion of responsible agencies. Cantonal approvals often require personal visits to offices that are very distant from the town in which a project is planned.
 - Requirements for "original" or at least printed copies of relevant documents continue to hamper the timely administration by reviewing offices;[legal, administrative changes

VI INSPECTION PROCESSES

A review of current inspection structures/procedures is not an elemental component of the present report, which focuses on registration/permitting procedures and maps these. However, this section is included because it helps to inform the work SPIRA will do in the inspection area and brings up to date the information on inspections contained in FSBAT's assessment report. It also identifies how certain minimum technical requirements are certified in a manner similar to, but different from, inspections.

Some clarification is necessary when addressing regulatory inspections as these currently exist. First, the determination of minimum technical requirements (part of the post-registration permitting process described above) is not part of the inspection regime per se and there is substantial variation in the authority that determines the certification of minimum requirements. In Zenica, for example, the Municipal Commission is responsible for setting the minimum technical conditions for business premises⁸ (both for starting a business company or an independent craft shop). The composition and the scope of work of that Commission are established by a Decision of the Zenica Mayor. In Sarajevo, the Cantonal Government nominates the Commission that will assess compliance with minimum technical requirement. The Commission of the City of Banja Luka Administration evaluates business premises to determine whether the minimum technical requirements for performing a business activity have been met.

The fact that the certification of minimum technical requirements is not part of the regular inspection system has several significances:

- The restructuring of the inspection services, accomplished by the World Bank sponsored Entity Laws on Inspectorates, does not reach these activities.
- The Laws on Inspectorates, because they prohibit inspectors from participating as expert members of commissions certifying minimum technical requirements (for conflict of interest reasons) has created a void in the staffing of many commissions.
- There is an opportunity to substantially reduce the time necessary for business start-up by converting these commission certifications into regular inspections that follow business start-up. In some countries, including Serbia, unless the business in issue is engaged in activities that may threaten public safety, the operator can certify, by signature, that the minimum requirements have been met and these are subsequently verified by regular inspection processes.

Apart from the commissions that are responsible for determining whether premises meet necessary technical requirements, there are other commissions responsible for inspecting business premises: i.e. commissions that inspect business locations in connection with the allocation of tax identification numbers, commissions in charge of "categorization of facilities" in catering operations, etc. Activities of those commissions also affect the

⁸ Book of Rules on conditions of minimum technical equipment for the business premises for the trade activities (Official Gazette FBiH No. 12/05, 60/05, Book of Rules on conditions of minimum technical and other conditions for entrepreneurship (Official Gazette of FBiH no. 69/05),

overall length of the process. The SPIRA team has noted a number of differences in the composition and scope of work of those commissions in the benchmarked municipalities.

In Zenica, a tax inspector is obliged to inspect business premises prior to the allocation of a TIN to a company. What he/she actually does is to go and see if the premises exist at the stated address. The Tax Office Inspector must verify the business address no later than 5 days after the application for registration is submitted to the court registry⁹. The municipal commission for verification of minimum technical requirements follows after the tax inspector. However, in the process of allocating a TIN for independent crafts, a tax inspector is not obliged to inspect the business address.

In Sarajevo, the founder of a company is required to submit each of the following documents to get a TIN certificate:

- A lease contract or a proof of property ownership,
- The Approval of the relevant municipality's Secretariat for Economy to perform business activities,
- The decision of the Cantonal Ministry on fulfilling the minimum technical requirements for performing business activities.

Upon submission of the above mentioned documents, a team of two inspectors from the Cantonal Tax Department conducts a review of documents, inspects the stated business address and issues Minutes on its findings. The Cantonal Tax office allocates a TIN and issues a certificate of tax registration based on the application form, court registration decision and the Minutes of the Commission. As in Zenica, a tax inspector is not obliged to inspect the business address prior to the allocation of a TIN for an independent craft shop.

In Banja Luka a tax inspector is not obliged to conduct an inspection of the business address prior to issuing a TIN to either an LLC or to a craft shop. The TIN is issued after the following documents are submitted along with the application form:

- A proof of payment of a 2 KM fee
- ID of the company director (a verified copy)
- A verified copy of Court Registration decision
- A verified copy of the Decision of the relevant municipality's Secretariat for Economy for performing business activities,
- Statistics number and
- The business' official stamp

A second clarification that must be made is in discussing the current procedural provisions governing regulatory inspections. The newly adopted Entity Laws on Inspectorates are discussed at some length below, specifically as to features of these laws that may support or otherwise impact on the rights of businesses subject to inspection. It is important to note that the mechanisms described here are based on their provision in law – not based on their real application. The laws took effect approximately a month ago

⁹ The SPIRA team was informed by the Head of Cantonal Tax Office about this procedure and its practice in Zenica. However, the Book of Rules proscribes a different procedure: after getting the Decision on court registration, a tax office is supposed to start the procedure of allocating a tax number, not before.

and, although the World Bank provided advance training to support their implementation, the laws have not yet generated real world data as to their effect on the ground.

When FSBAT's *Assessment of SME Permitting and Inspection Process in Bosnia and Herzegovina* was reported out in Autumn 2004, it anticipated the adoption by the two Entities of the World Bank sponsored Laws on Inspectorates. That has been accomplished, though only recently – and the significant aspects of the legislation and the current status of the Joint Inspection Bureaus can be described here.

Both Entities eventually passed Laws on Inspectorates in 2005. In the FBiH, the Law on Inspectorates was published on December 14, 2005 and the RS Inspection Law on December 16, 2005. Both laws have been in effect since January 1, 2006 (FBiH Inspection Law is published in the FBiH Official Gazette no. 69/05, RS Inspection Law in the RS Official Gazette no. 113/05), however they must still be implemented. The necessary acts include the appointment of Directors of the Entity Inspection Administrations, as well as the creation of combined inspection bureaus at lower levels of government. At the time of this writing, an Acting Director of the RS Inspection Administration has been appointed, but her FBiH counterpart has not. The drafting of Books of Rules, staffing and launching operations are tasks that lie ahead.

It should also be noted that the respective Laws on Inspectorates remain under a constitutional cloud. The Federation Law has been challenged on the basis that it improperly interferes with cantonal autonomy. The RS law has been challenged, for somewhat similar reasons, by mayors claiming that it violates principles of local self-government. In any event, for purposes of present discussion, it is assumed that the laws will be upheld and applied.

Historically, inspection services have been associated with particular ministries, acting as the enforcement arms of the bodies responsible for administering regulatory policy. Partly as a consequence of this decentralized structure, a hodge-podge of laws and by-laws were propagated to regulate inspections themselves. The organization, authorizations and the competences of the inspections in Federation of BiH and RS were prescribed by certain organizational laws on inspections and substantive laws¹⁰. As a consequence of the multitude of specific laws, there have been overlapping competences in certain types of inspections on the one hand, and on the other, areas where inspections did not occur because the law did not clearly define competences for certain types of inspections.

¹⁰ List of the FBiH Laws that regulate the inspection activity –

1. Federation laws – 40 laws
2. Regulations and general acts –
 - Regulation issued by FBiH Government – 6 Decrees
 - Regulations and acts issued by the Federation Ministries – 15 Book of Rules

(List provided to SPIRA by Ibrahim Tirak- member of the WB working group for drafting FBiH Inspection Law)

List of the Cantonal Laws and regulations that are being applied by the inspectors in Zenica-Doboj Consolidate Inspection Bureau (approximate number for one Canton).

- There are around 16 different laws and regulations that are being applied in the inspection area in Ze-do Canton.

(List provided by Ibrahim Avdagic – the Head of the Consolidate Inspection Bureau in ZE-DO Canton)

According to some observers, the association between ministries and inspection services also lent itself to various abuses, where certain businesses were subjected to excessive inspections (perhaps to generate revenue or for political reasons) and others were essentially left alone. For these reasons, conditionalities associated with the World Bank's Business Adjustment Credit (BAC) to Bosnia and Herzegovina, included requirements that the inspection system be rationalized and to have strict legal limits placed on the numbers of days each year that businesses can be subjected to certain types of inspections.

Before going further into the discussion of the new inspection laws there may be value in discussing why inspections are necessary at all. In fact, a brief discussion may be useful in understanding some of the benefits of the new laws.

Inspections are a method by which government agencies ensure compliance with regulatory provisions designed to protect/support a public or private interest. Inspections help guarantee that conditions are maintained that support the safety and well-being of society. This includes the protection of air and water quality through environmental inspections, inspections that control the structural integrity of buildings by maintaining certain standards, etc. The core purpose of any inspection program should be to bring the regulated community into compliance with the relevant regulations and to maintain that compliance. Although penalties may generate revenue for the government this is not a legitimate purpose for inspections, it is a by-product.

The content of inspections, i.e., what the inspections cover, is determined largely by regulatory provisions set forth in laws and by-laws. The procedures used by inspection services are affected by general procedural laws such as the respective Entity Laws on Administrative Procedures. The recently adopted Entity Laws on Inspectorates address the structure of the inspection services and, to some extent, the procedures employed. Among other things, the new laws support the underlying purpose of inspections as tools to promote compliance. The laws require that any sanctions imposed are to be the least onerous capable of producing compliance.

According to these new laws, inspectorates are organized on the principle of functionality. New legal solutions enable more efficient and cost effective inspection supervision. It is considerably easier to provide regular and uniform application of the law, professional explanations and instructions when inspections are organized within one body. Most significantly, each law creates a joint inspection bureau responsible for managing all inspections embraced by the laws (administrative inspections and some finance inspections are clearly excluded).

FBiH Law on Inspections

The most significant innovation in the FBiH Law is its organization of the body managing inspection affairs. Namely, the Law prescribes Federation inspections, as stipulated by this law, to be a part of the Federation Administration for Inspection Affairs as of an independent Federation body of administration with headquarters in Sarajevo.

Cantonal inspections are organized in a similar manner, with the law establishing Cantonal Administrations for Inspection Affairs as an independent Cantonal body of administration with headquarters in each Canton. Both Federation and Cantonal Administrations of Inspection Affairs may have their regional units (branches) outside their headquarters,

which will be regulated by the Internal Organization Book of Rules. Also, it is envisaged to be able to transfer inspection duties from the cantonal administration onto the municipality or a city where there such a transfer is supported by circumstances.

The new approach, which organizes inspections based on function and efficiency, appears superior to the previous system because it provides for:

- A higher level of independence for inspectors in performing inspection activities
- The consolidation of inspection activities within one body which provides a number of consequent benefits:
 - The possibility for task assignment and specialization of inspectors;
 - Easier planning of team reviews;
 - Better use of material-technical equipment and higher operational possibilities for the inspectors;
 - Easier to provide regular and uniform application of the law, professional explanations and instructions when inspections are organized within one body.

List of Inspections

The new law reduces the number and the types of inspections. Instead of the previous 19 inspections, the FBiH law now envisages only 10:

Market-tourism, Sanitary Health Pharmaceutical, Labor Inspection, Urbanism Ecology Inspection, Traffic Inspection, Agriculture Inspection, Forestry Inspection, Waterpower Inspection, Veterinary Inspection and Technical Inspection. The scope and authority of the abolished inspections is transferred to these as determined by this law.

Note: Inspections enforcing tax and finance regulations are not included in the restructuring the law undertakes.

Qualifications of Inspectors

A person having an appropriate educational level (university or an equivalent) may be appointed the Chief Inspector or as an Inspector. Also, such candidates will have to have passed the professional administration state exam for civil servants or the general knowledge test for civil servants in BiH institutions, and passed an expert inspector exam. They must also meet specified experience requirements. As an exception to this rule, a person with a college equivalence degree may also be appointed inspector, under particular conditions.

Besides those mentioned above, the law envisages a series of other new solutions, including:

- Limiting the total number of days that a particular business may have to endure routine inspection visits from the market inspection, labor inspection and finance inspection, to no more than 12 days annually (compare to 15 days in RS);
- Providing the possibility of giving public notice of a pronounced administrative measure in a manner that the inspector determines to be appropriate (posting at the entrance of the business premises, in public newspapers or another suitable manner);

- Providing for, in limited circumstances, the possibility that an inspector working for one Canton is able to exercise jurisdiction in another, when application of Federation regulations are in question, and the Director of Federation Administration for Inspection Affairs determines this necessary¹¹;
- Prohibiting inspectors from one administrative domain from conducting inspections within the inspection jurisdiction of another administrative domain, unless administrative measures must be set urgently in order to protect the public interest;
- Prescribing that, whenever possible, multiple inspections be conducted simultaneously through joint inspection teams; and
- Providing that no one is to influence an inspector in his or her conduct of an inspection or prevent an inspector from conducting the inspection supervision and setting administrative measures as and when deemed necessary.

Rights of the Subject of Supervision in the Inspection Process

The rights of the subject of supervision, under the new law, create corresponding duties on the part of inspectors. Hence, the subjects of supervision in the process of inspection supervision have the right to:

- Request that the inspector display his/her official ID, proving the inspector's identity and official capacity;
- Request the inspector to display warrant/order for conducting the inspection, with clearly indicated subject of inspection and legal basis for conducting inspection, unless inspector informed the subject of the inspection previously by telephone, or sent an order/warrant three days before commencement of the inspection (or where other limited exception applies);
- Request the inspector to behave in accordance with principles of Ethical Conduct for Civil Servants in Federation of BiH and Ethic Codex for inspectors, which, first of all means that inspectors are behaving decently, kindly, professionally and responsibly;
- Request from the inspector the opportunity to observe all aspects of the inspection activities and permit the subject of inspection to comment on all the facts and circumstances relevant to establishing a fair and complete factual picture;
- Be informed by the inspector of all documents/evidence that were not obtained from the subject, to inspect them and to have an opportunity to comment on them;
- In the process of the inspection activity, an inspector is obliged to support regulatory compliance applying the least burdensome administrative sanction (starting with a warning) deemed necessary to obtain compliance and to provide information that may assist the subject in achieving compliance;
- In the event that samples are taken for quality control testing of a product, the subject is entitled to request that the inspector inform the subject of the testing results and inform the subject in writing within three days following the return of results from the research/testing institution. If the subject of the inspection is

¹¹ Law on Organization of the Administrative Bodies in the Federation of BiH (Official Gazette no. 35/05) – Articles 133 -136 regulate relation of Federation Inspection with the Cantonal and the Municipal Inspection

dissatisfied with the report, the subject is entitled to have the sample retested by another professional institution;

- Although the inspector is entitled to seize the business and other documentation from the subject of inspection in order to verify the validity their contents, or for use as evidence in a criminal procedure; the subject of an inspection is entitled to request that the inspector return the seized business and other documentation, within the deadline the inspector determines, unless this documentation is being presented as an evidence in the criminal or penalty procedure/the court of law;
- When setting an administrative measure against the subject of inspection, an inspector is obliged to set a measure that is extenuating for the subject, under a condition that the mitigating/extenuating administrative measure may accomplish the purpose for which the measure was set in the first place;
- The subject of the inspection is entitled to request that the inspector provide an opportunity for the subject to give remarks on the inspection conducted;
- Request inspector to issue a confirmation on a pronounced mandatory fine;
- Request that the inspector keep the business and other secrets with which the inspector became familiar during the process of conducting the inspection; and
- In order to protect his or her own rights or legal interests, the subject of inspection has the right to request, orally or in writing, the conduct of an inspection and setting of administrative measures against certain person(s) who jeopardize the subject's legal powers or legal interests.

Outcome of the Inspection

On each and every inspection conducted, the inspector is obliged to make a record and state facts as determined by the inspection. The subject of the inspection has the right to give remarks/objections on the record. The record of inspection is a public document, except for those parts of the record, on which the subject of inspection placed objections as to the inspections regularity. If a certain administrative measure was ordered in the record, the subject of inspection may file a complaint on the Record within three days. The inspector is obliged to consider objections made on the Record and, as and when required, to complete the inspection activities on which objections have been made. The inspector shall not decide on the objections stated on the Record separately, but will consider them within the process of bringing an administrative decision on the conducted inspection. When the inspector determines that the subject of inspection is not in compliance with regulations or is acting inappropriately, the inspector is obliged to order the subject of inspection to take appropriate measures such as:

- order that identified shortcomings be removed;
- suspend or temporarily suspend the activity performed;
- temporarily confiscate assets gained illegally or serving illegal trading;
- collect a fine at the spot (a mandatory fine) if that is authorized by a special regulation;
- file a violation or a criminal charge and set other measures.

The inspector sets administrative measures through a Decision. The decision must be in a written form and must contain the following: the title of the inspection administration and the title of the decision-issuing inspection, a number and a date of the decision, an

introduction, the enacting clause, an explanation, a legal remedy, the inspector's signature and a stamp of the inspection administration.

Appeal Proceedings

One is entitled to file an appeal on the inspector's Decision on pronounced administrative measures, as a regular legal remedy:

- Against the Decision of the Cantonal inspector brought based on the Federation regulation, an appeal may be filed to Federation Administration for Inspection Affairs within 8 days as of the day of the receipt of the decision. The Director of the Federation Administration for Inspection Affairs decides the appeal.
- Against the Decision of the Cantonal inspector brought based on the cantonal regulation, one may file an appeal within 8 days as of the day of receiving the decision. The Cantonal ministry from the respective administrative area decides the appeal, unless Cantonal law prescribes another cantonal body of administration to decide the appeal.
- Against the decision of the Federation Inspector an appeal may be filed within 8 days as of the day of receiving the decision. The Federation ministry from the respective administrative area decides the appeal, unless Federation law prescribes another Federation administrative body to decide the appeal.

The second-instance body is obliged to rule on an appeal against the Decision within 15 days as of the day of receiving an appeal. An appeal on the Decision shall postpone the enforcement of the Decision, unless otherwise specified by a separate law. Considering that an appeal, as a general rule, does postpone the enforcement of a decision, it is necessary to point this out, given the character and the importance of a decision as of an administrative document.

The decision is an administrative act issued by an individual (administrative official). Therefore, if an appeal would not have a suspending power, and, in case the appeal procedure later determines that the administrative act is not in accordance with the law, the decision's enforcement would cause legal consequences, which could result in acclaim for compensatory damages. The Decision brought upon the appeal is final and binding. It can only be challenged in an administrative dispute before the court.

RS Law on Inspections

RS Law on Inspections is conceptually better structured than its FBiH counterpart (which is burdened by the governmental subdivisions of the Federation). It contains:

- General provisions (that regulate the procedure, implementation of measures, the responsibility of the inspectors and the relation between the inspections in performing the inspection activities);
- Special provisions (that include the types of the inspections). There are 10 inspections in RS: market, inspection in agriculture, inspection in forestry and hunting, veterinary inspection, inspection activity in power, mining, geology, oil and gas and pressurized chambers, water inspection, inspection in traffic and communications, urbanism & construction inspection, labor inspection and protection at work place, health & sanitary inspection);

- Penalty provisions;
- Transitional and final provisions.

The inspectorate is a Republic Administration for inspection activities, and performs its duties independently. It reports to the Government of RS. The headquarters of Inspectorate is in Banja Luka. In order to perform its activity properly, besides the headquarters, the law envisages regional organizational units in Banja Luka, Prijedor, Doboj, Bijeljina, East Sarajevo and Trebinje.

The Law clearly defines spheres/areas of the inspection supervision: goods and service turnover, agriculture, protection of plants, forestry and hunting, health protection of animals and a veterinary activity, energetic, mining, geology, oil, and gas, waters, traffic and communication, urbanism and construction, labor and protection at work, health protection for people, sanitary protection, production and trade of medications, protection from ionizing and non-ionizing radiation.

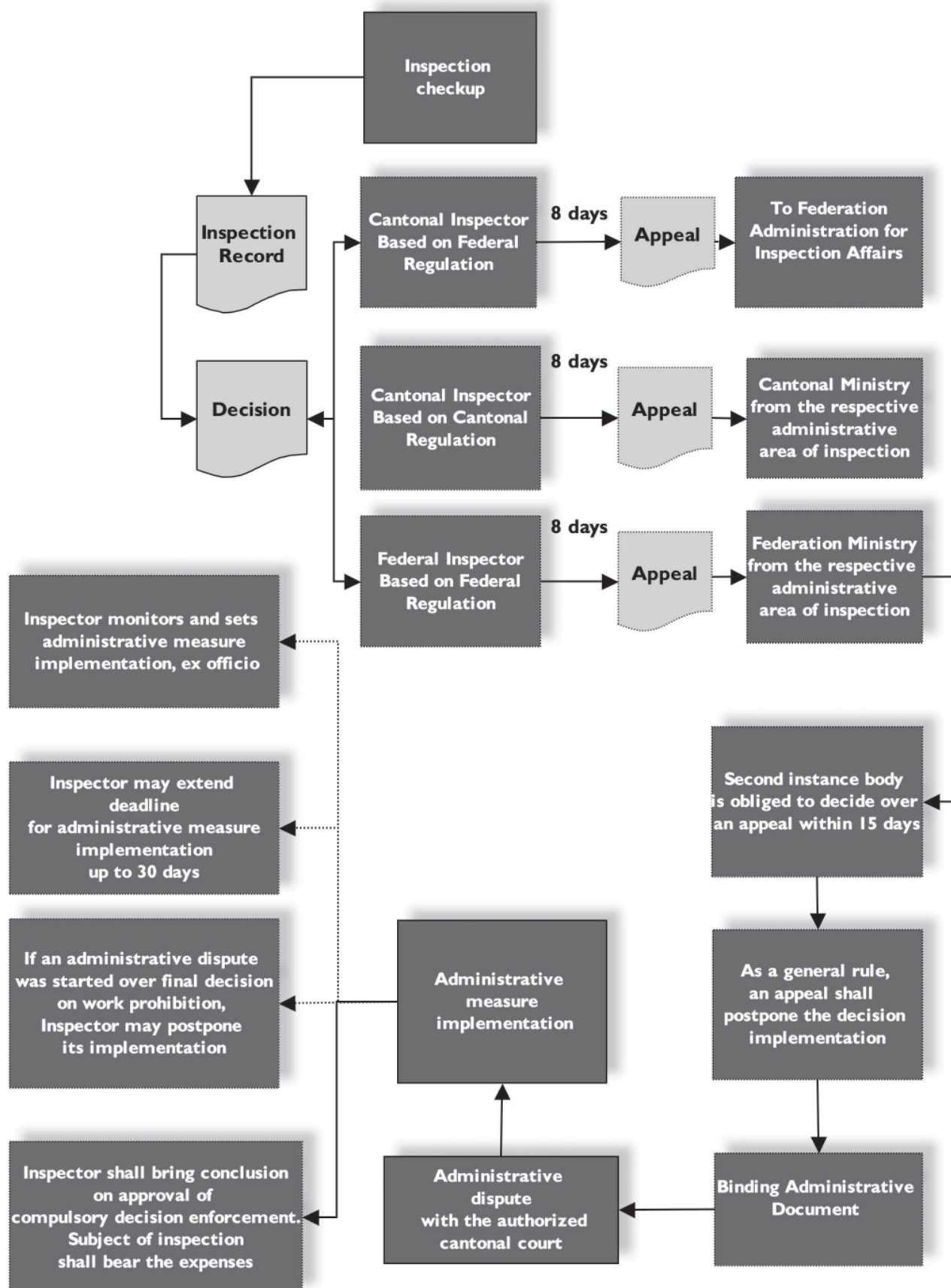
The Law sets out the criteria for individuals to meet in order to conduct the inspection activity; a university degree or an equivalent in the appropriate department, a person who passed the civil service exam, the state exam for inspectors and have the prescribed years of working experience. The law contains provisions that define the general and special authorities of the RS inspectors¹².

The RS Law on Inspectorates also suspends execution of a decision, which is appealed, unless a specific provision of law prescribes otherwise.

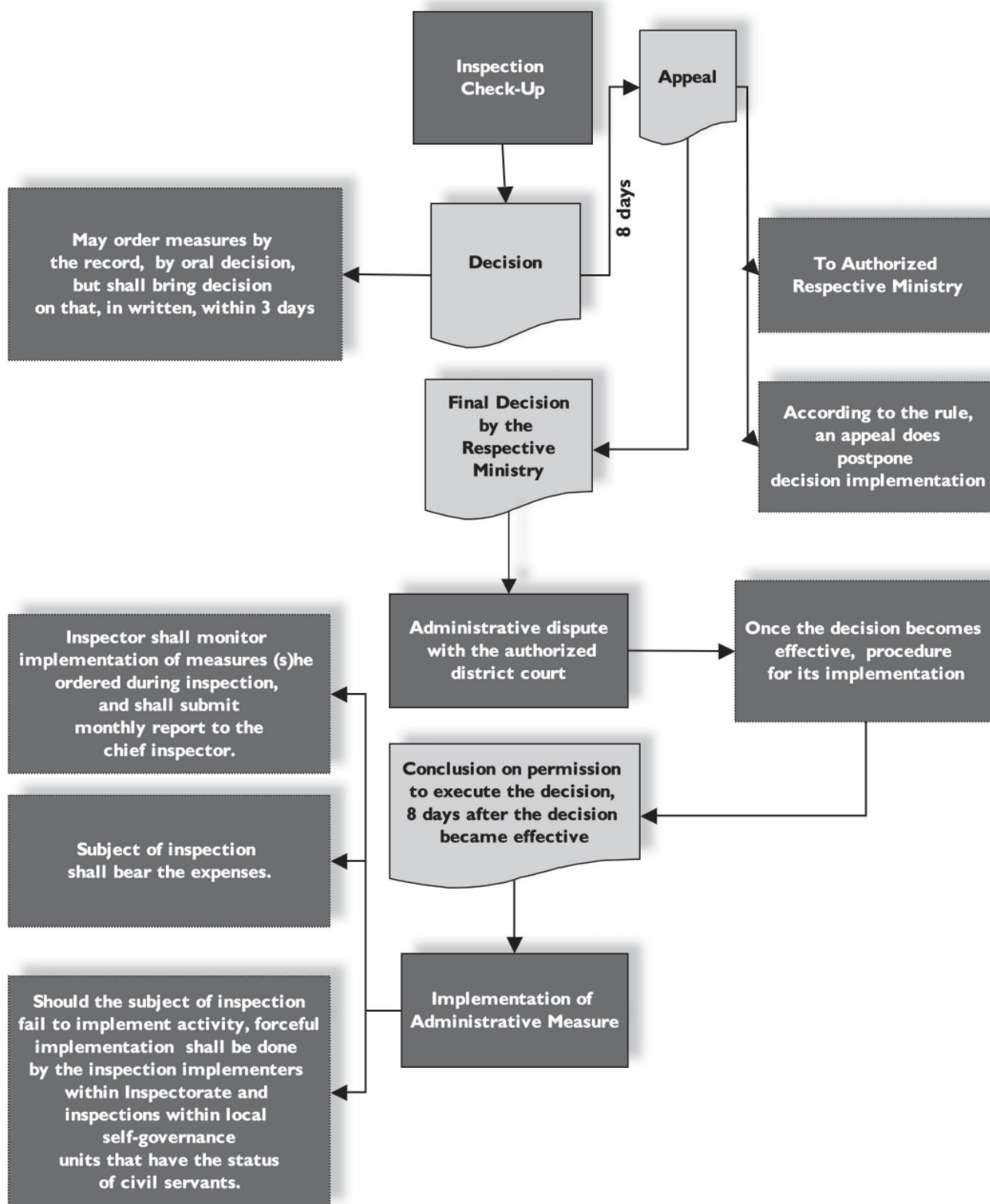
In another distinction with the Federation Law on Inspectorates, the RS Law included provisions that will affect the "*gray economy*". Those provisions will enable, and perhaps compel, inspectors to take actions against unregistered commercial activities that are competing on unfair terms with legitimate businesses.

¹² Articles 26 - 27, RS Law on Inspectorate

FEDERATION OF BiH



REPUBLIKA SRPSKA



TYPES OF INSPECTIONS

FEDERATION BIH	REPUBLIKA SRPSKA
1. MARKET -TOURISM INSPECTION	1. MARKET INSPECTION
2. INSPECTION IN AGRICULTURE	2. INSPECTION IN AGRICULTURE
3. FORESTRY INSPECTION	3. INSPECTION IN FORESTRY AND HUNTING
4. VETERINARY INSPECTION	4. VETERINARY INSPECTION
5. WATERPOWER INSPECTION	5. WATER INSPECTION
6. SANITARY-HEALTH - PHARMACEUTICAL INSPECTION	6. HEALTH-SANITARY INSPECTION
7. LABOR INSPECTION	7. LABOR INSPECTION AND OF WORK SAFETY
8. TRAFFIC INSPECTION	8. INSPECTION IN TRAFFIC AND COMMUNICATIONS
9. URBANISM-ECOLOGY INSPECTION	9. URBANISM-CONSTRUCTION, ECOLOGY AND GEODESIC INSPECTION
10. TECHNICAL INSPECTION	10. INSPECTION IN ENERGETICS, MINING, GEOLOGY, OIL, GAS AND PRESSURIZED CHAMBERS

ADVANTAGES OF FUNCTIONAL STRUCTURE OF INSPECTION ORGANIZATION:

- Conducting all inspection activities within one body
- Higher level of inspectors' independence in performing the inspection
- Higher possibility for distribution of tasks and specialization of inspectors
- Easier planning of team checkups
- Better use of material – technical equipment and higher operative capacity of inspectors
- It is easier to provide regular and uniform application of law, expert explanations and instructions when inspections are organized within one body

ABBREVIATIONS AND ACRONYMS

BiH	Bosnia and Herzegovina
BSC	Business Service Center
CT	Cost Total (KM)
DFID	Department for International Development of the UK Government
EC	European Commission
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
FIAS	Foreign Investment Advisory Service Agency
FSBAT	Financial Sector Business Advocacy and Training Project
GAP	Governance Accountability Project
GTZ	German Society for Technical Cooperation [Deutsche Gesellschaft für Technische Zusammenarbeit]
IRI	International Republican Institute
KM	Konvertibilna Marka
LLC	Limited Liability Company
OHR	Office of the High Representative
OSCE	Organisation for Security and Cooperation in Europe
PIO	Pensioners and Invalids Insurance Fund
PoP	Purpose of Premises
RS	Republika Srpska
SEED	Southeast Europe Enterprise Development
SMEs	Small and medium-sized Enterprises
SPIRA	Streamlining Permits and Inspection Regime Activities Project
T	Time (days)
TIN	Tax Identification Number
UNDP	UN Development Programme
USAID	United States Agency for International Development
VAT	Value Added Tax

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